



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Misc Civil Appli 1332 of 2006**

**MBUGUA & MBUGUA ADVOCATES .....PLAINTIFF**

**VERSUS**

**KENINDIA ASSURANCE CO. LIMITED ..... DEFENDANT**

**R U L I N G**

On 30<sup>th</sup> March, 2007, the advocate/clients Bill of Costs filed by Mbugua & Mbugua Advocates on 27<sup>th</sup> March, 2006 was duly taxed. On the 5<sup>th</sup> April, 2007 the client objected to the taxation and applied pursuant to Paragraph 11 (2) of the Advocates (Remuneration) (Amendment) Order for the reasons for the ruling on the taxation delivered on 30<sup>th</sup> march, 2007.

The client has not received any ruling or reasons for the taxation. In the meantime on 30<sup>th</sup> April 2007, the Deputy Registrar issued a certificate, certifying that the Bill of Costs lodged by Mbugua & Mbugua Advocates was taxed and costs certified at Kshs.90,203/35. The client has now come to this court under Paragraph 11 (4), of the Advocate (Remuneration) Order and Section 3A of the Civil Procedure Act.

It is the client's contention that the taxing officer erred in allowing excessive instruction fees, VAT on the total amount rather than on the instruction fee alone; taxing the Bill in the absence of the originating court file; failing to give credit for amount paid; and relying on the submissions of the applicant only.

The client maintains that it is unable to file a Chamber Summons seeking orders to alter the certificate of costs or to set aside the taxation, in the absence of the detailed reasons for the ruling of the taxing master. The client believes that it has a good reference, and therefore prays for an order of stay of execution of the order of the taxing master, taxing the Advocate Client's Bill of Costs, pending the hearing and determination of the intended reference. The client fears that unless the order for stay of execution is granted the advocate who has already applied for judgment in respect of the taxed costs may proceed to execute. Relying on the case of **Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Limited HCCC Misc. Appl. No.752 of 2004**, Mr. Omwenga who appeared for the client, urged the court to grant the application.

In response to the application the advocate filed grounds of opposition contending that the application was misconceived and lacking merit, that the filing of a reference is no reason for granting a stay of execution; and that the affidavit sworn in support of the application and the letter of objection dated 4<sup>th</sup> April 2007, differ materially on the reasons for the reference.

The advocate further submitted before this court, that the Bill of Costs, having been taxed and a certificate issued by the Registrar on 30<sup>th</sup> April 2007, and that certificate not having been set aside or altered, under Section 51 of the Advocates Act, that certificate is final. Mr. Mbugua, further submitted that there being no reference filed to challenge the certificate of taxation, the application for stay of execution lacks merit and is misconceived, because the court cannot interfere with the jurisdiction of the taxing master. Mr. Mbugua, maintained that the court can only have jurisdiction where it is dealing with a reference.

The advocate further argued that there was no judgment in situ and therefore an order of stay of execution of judgment cannot issue as there is no judgment. Mr. Mbugua, likened a reference to an

appeal and opined that the applicant should have complied with the conditions governing applications for stay of execution pending appeal before his application can be granted.

I have considered the application, the submission of both counsels and the court record. It is evident that the client did raise an objection under paragraph 11 (1) of the Remuneration Order, to specific items of taxation and asked for the reasons for the taxing master's decision on those items. To date no reasons have been given to the client. Paragraph 11 (2) of the Advocates Remuneration Order, is mandatory that upon the filing of an objection under Paragraph 11 (1), the taxing officer must record and forward the reasons for his decision on the questioned items within 14 days.

Noting that the taxing officer has not given the client any reason at all for the taxation and even the court record, is silent on that score, the client was clearly handicapped and could not file a reference by way of a Chamber Summons as required under Paragraph 11 (2) of the Advocate Remuneration Order.

The client having filed a notice of objection within the time specified under Paragraph 11 (1) of the Advocate's Remuneration Order, it was not proper for the Deputy Registrar to issue a certificate of taxation before compliance with Paragraph 11 (2) of the Remuneration Order. Moreover, time limited for filing the reference could only start running on receipt of the reasons for the decision of the taxing officer.

In the circumstances it is only fair and just that this court exercises its inherent powers to intervene and prevent the abuse of the court process by ordering a stay of the taxation proceedings and execution of the order arising therefrom, pending the compliance of Paragraph 11(2) of the Advocate Remuneration Order by the taxing officer.

Costs of the application shall be in the cause.

Orders accordingly.

***Dated, signed and delivered this 28<sup>th</sup> Day of February, 2008.***

**H. M. OKWENGU**

**JUDGE**