



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION
MISC APPLI 638 OF 2005
CYPRIAN MASAFU WANYONYI WEKESA
(T/a WEKESA & COMPANY ADVOCATES)ADVOCATE
V E R S U S
JASWINDER SINGH ENTERPRISES LTDCLIENT
R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

There is before me an application by notice of motion dated 3rd March 2006. It seeks an order that the notice of motion dated 14th December 2005 (which is an application for judgment for an advocate's taxed costs under section 51(2) of the Advocates Act, Cap. 16) and all proceedings herein be stayed pending the lodging and determination of a reference by the Client against the taxation. The application invokes the inherent power of the court under section 3A of the Civil Procedure Act, Cap. 21 (the Act).

The grounds for the application appearing on the face thereof are:-

1. That the Client has already instituted the process of lodging a reference against the taxation and has applied for reasons thereof in order to lodge the reference.
2. That the reasons for the taxation have not yet been supplied by the taxing officer.
3. That unless stay is granted the Client shall suffer irreparable loss and its reference rendered nugatory.
4. That the intended reference will raise important issues and the same has high prospects of success.
5. That the Client is ready to abide by any condition that the court may impose.
6. That it is fair and just that the order sought be granted.

There is a supporting affidavit sworn by one **PARMINDER SINGH VIRDI**, a director of the Client.

The Advocate has opposed the application as set out in his replying affidavit sworn and filed on 16th March, 2006. The grounds of opposition emerging therefrom are *inter alia*:-

1. That the application is incompetent and does not lie in law.
2. That the Client's intention to pursue a reference against the taxation does not automatically entitle it to an order of stay of proceedings.
3. That the taxing officer gave the reasons for the taxation in the ruling delivered thereon.
4. That there has been undue delay in bringing the application and the same is intended only to delay the course of justice; it is thus an abuse of the process of the court.
5. That the Client is on the verge of being wound up, and if that happens the Advocate will suffer irreparable loss.
6. That the Client has not established substantial or irreparable loss.
7. That in any case the Advocate has the means to refund any monies found not to be due to him.

I have duly considered the submissions of the learned counsels appearing, including the cases cited. I do not intend to go into the technical arguments presented. As already seen, the application invokes the inherent power of the court under section 3A of the Act. The court may make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. What the court is required to do in applications of this nature is to balance the interests of both parties and secure their respective positions. The Client ought to be facilitated to pursue his right to challenge the taxation. On the other hand, the Advocate, who will be prevented from immediately accessing his duly taxed costs, must have the assurance that those costs, or a portion thereof, will be readily available to him when the reference is disposed of.

I am of the view that the interests of both parties will be best safeguarded by granting the order of stay sought upon the condition that the Client deposits, within fourteen (14) days of delivery of this ruling, the taxed costs in an interest-earning account (in a reputable bank or financial institution) in the joint names of the Advocate and the Client's advocates. In default the stay now granted shall automatically stand lifted, and this application shall be deemed to be dismissed with costs to the Advocate. Otherwise costs of the application shall be in the intended reference. If no reference is ultimately lodged, costs of the application shall go to the Advocate. There will be orders accordingly.

As agreed by the advocates at the time of hearing this application, this ruling shall equally apply to the application by notice of motion dated 3rd March 2006 in **Milimani HC Misc. Appl. No. 639 of 2006**; there will be similar orders therein.

DATED AT NAIROBI THIS 5TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 7TH DAY OF SEPTEMBER, 2007