



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**MISC CASE NO. 60 OF 2007**

**HAVELOCK MURIUKI &**

**RAVAL ADVOCATES..... APPLICANT/ADVOCATE**

**VERSUS**

**JAYANTILAL DHARAMSHI GORSRANI.....RESPONDENT/CLIENT**

**RULING**

This is an application by the Respondent/Client (herein after “**the client**”) seeking one primary order that this cause be stayed pending the hearing and determination of **HCCC No.1078 of 2006: Jayantilal Dharamshi Gosrani – vs – J. B. Havelock L. W. Muriuki and Raval T/A Havelock Muriuki & Raval Advocates.** The application has been brought under the provisions of Sections 3, 3A and 63 (e) of the Civil Procedure Act and all enabling provisions of the Law. The application is premised on several grounds stated on the face of the application.

The application is supported by an affidavit sworn by the client to which are annexed a copy of a plaint in HCCC No.39 of 2005 and a Memorandum dated 3.12.2004. There is a further affidavit sworn on 28.3.2007.

The application is opposed and there is a Replying Affidavit sworn by Jonathan Bowen Havelock (hereinafter “**the Advocate**”).

The application was canvassed before me on 21.9.2007 by Mr. Masika Learned counsel for the Advocate and Ms Kiniti Learned counsel for the client.

I have considered the application, the affidavits filed by both parties and the submissions made to me by counsel. Having done so, I take the following view of this matter. The substance of the client’s

application is that after he had appointed the advocate to act for him in HCCC No.39 of 2005, the advocate failed or ignored to provide him with proper professional services consequently prompting the client to seek alternative legal representation elsewhere. The client through another counsel mounted Nairobi C.A. No.324 of 2005 against a decision made against him in HCCC No.39 of 2005. The client then filed HCCC No.1078 of 2006 for recovery of damages for professional negligence against the advocate.

In the client's view it is in the interests of justice that this cause be stayed pending the outcome of the said HCCC No.1078 of 2006 otherwise success of the latter case will be rendered nugatory.

The advocate's contention on the other hand is that no case exists to warrant a stay of this cause which is pending taxation of an Advocate/Client Bill of Costs in respect of costs in acting for the client in HCCC No.39 of 2005. In the advocates view, the arguments made by the client in support of this application should be made before the Taxing Officer of this court.

I have considered whether there is jurisdiction to stay taxation. It is apparent that stay of proceedings such as is sought in this application is not provided for in the Rules or in the Advocates (Remuneration) Order. In appropriate cases however, the courts inherent jurisdiction may in my view and in proper proceedings be invoked to order stay of proceedings. I ask myself whether the client has succeeded in persuading me to order stay of the taxation pending herein. Not in these proceedings.

There is no dispute that the client instructed the advocate in HCCC No.39 of 2005. There is also no dispute that obviously the advocates earned fees. As to whether his services were inadequate or that the advocate was negligent will be determined in the suit filed by the client i.e HCCC No.1078 of 2006. If the client finally succeeds in his claim, he will recover from the advocate. There is no allegation that the advocate is impecunious. The client's success in his suit will therefore not be rendered nugatory should the taxation proceed. I also detect no prejudice that will be occasioned to the client in the event that the taxation proceeds, and he eventually succeeds in establishing his claim in the said suit.

Under the Advocates (Remuneration) Order the Taxing Officer is given exclusive jurisdiction to deal with taxations. A judge of the High Court gets involved when a reference or an application related to a reference is made before him. There is no dispute that the advocates bill of costs is properly before the taxing officer. Issues of quantum will be considered by him. As the jurisdiction of the taxing officer is not being challenged and the client is not seeking a reference by his application, I feel that to accede to the orders sought by the client will improperly impede the Taxing Officer's jurisdiction.

In the result, the client's application is declined with costs to the Advocate.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF OCTOBER, 2007.**

**F. AZANGALALA**

**JUDGE**

**26/10/07**