



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Misc Civil Appli 68 of 2004

WANGA & COMPANY ADVOCATES.....APPLICANT

=VERSUS=

DORCAS J. KISORIO.....RESPONDENT

RULING

This is an application under the provisions of order 48 Read together with section 3 and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya.

It seeks inter alia an order for stay of execution for recovery of party of party costs which had been fixed pending the of a Notice of Objection to the Taxing Master.

This Honourable Court ordered that the amount in the Certificate of costs be deposited in Court pending the inter – partes hearing of the Application. The sum of Kshs 17,463/= was deposited in the Court on 9/10/2007.

I have considered the provisions of order 48 Rule 3 of the Civil Procedure Rules. I am satisfied that the procedure used in bringing this application is proper and sound. Also the failure to indicate at the bottom the warning to a Respondent about non-attendance is not fatal to the application while Order 50 Rule 15(2) is couched in the mandatory terms. I do hold that it is merely directory and for a certain purpose. It is trite practice and a matter of judicial notice that so long as service is proper, a party fails to appear in Court at his /her own peril. The consequences are well known.

On the merits of the Application the taxation was fixed for hearing and the Ruling delivered on 28/08/2007. The Applicant filed Notice of objection and asked for reasons within time. The Court has not given the reasons to date.

I am of the view that the was nothing in law stopping the Respondent to proceed for execution to recover the costs in accordance with the law. Should there be a stay pending the reasons and reference being filed?

I have considered the facts and circumstances. This is a matter for the discretion of the Court. The taxed costs have already been deposited in Court. It is the duty of the Court to give reasons for the taxation/assessment. But such reasons will be given on the Court's own terms and not under any direction or supervisions of an applicant.

The reasons ought to be given within a reasonable time once it is requested for within time.

I find that the way the objection has been framed is not proper as it purports to the set conditions and direction to the taxing master. All the applicant is to do is stated the items objected to and perhaps the reasons. The taxing master would then give reasons for the taxation and assessment of the various items. The objection is not strictly a petition of Appeal or the Reference itself. As a result, I do hereby direct that the Taxing Master gives reasons within 30 days from today. However, the questions will be whether the awarded amounts were allowable and in accordance with the scales of remuneration. The question of whether the advocate had been instructed or not, the validity or competence of affidavits can only be raised in any reference filed subsequent to the reasons.

I am inclined to grant the order of stay. One cannot say shs 17,000/= is a paltry sum without a supporting affidavit to show means. I have no doubt that the Respondents can repay any amount by which the taxed amount may be reduced, however, I think that it would be best if the execution takes place after determination of the intended reference. This Court has been put on notice that there is no decree and therefore the mode of final execution could be an issue.

I do hereby grant prayers 4 of the Application. The Reference be filed within 14 days of the Reasons being given. Costs of the application be in the intended Reference.

DATED AT ELDORET THIS 13TH DAY OF NOVEMBER 2007.

M.K. IBRAHIM,

JUDGE.