REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 197 of 2003

JATCO TRANSPORTERS & TOURS AGENCY LTD.....1ST PLAINTIFF

DANIEL MUTUA MUOKI…….....…….....2ND PLAINTIFF

VERSUS

JASON NJIRU KITHINJI

(TRADING UNDER THE NAME AND STYLE OF JETCO CABS).....1ST DEFENDANT

BIG NIPPON LTD…….....……..2ND DEFENDANT

SAMUEL M. WARUTERE…….....…….3RD DEFENDANT

JOSEPH KIPKORIR CHEBII…….....……..4TH DEFENDANT

JETCO CABS LIMITED…….....…….....5TH DEFENDANT

R U L I N G

This is an application brought by the 5th Defendant, pursuant to the provisions of Order 50 rule 1 of the Civil Procedure Rules as read together with Section 3A of the Civil Procedure Act.

Through the application, the 5th Defendant seeks Directions on the prosecution of the reference which the Plaintiff filed on 18th May 2005. The applicant also seeks the court's interpretation of the rulings delivered on 5th October 2005 and 30th November 2005, on the grounds that the said rulings appeared to be contradictory.

In the ruling dated 5th October 2005, this court dealt with the 5th Defendant's application dated 28th July 2005, through which the applicant had sought to strike out the plaintiff's "**Notice of Objection"**

dated 18th May 2005. Having given due consideration to that application, the court dismissed it with costs.

Meanwhile, the ruling delivered on 30th November 2005 was in relation to the plaintiff's application for stay of execution. The said application had been filed after a court broker had attached some vehicles belonging to the plaintiff.

After giving due consideration to the application, the court ordered that the vehicles which had been attached should immediately be released to the plaintiff. The court also ordered that there would be a stay of execution.

It is now said, by the applicant, that on 5th October 2005 the court had made a finding to the effect that the plaintiff had failed to deposit the security sum of KShs. 300,000/=, as it had been ordered to do, as a prerequisite to an order for stay of execution. Thereafter, the court is said to have erroneously granted an order for stay of execution. The action was said to have been erroneous on the grounds that the court did not make an express finding, to the effect that the plaintiff had complied with the order to deposit KShs. 300,000/=, as security.

I have perused the two rulings. In the ruling of 5th October 2005, I held as follows:-

"**Dealing first with the issue as to the security of KShs. 300,000/= which the respondent was to have deposited, I hold the view that there is no further directions which the court could be called upon to give. I hold the view that if the respondent failed to comply with the order to deposit the security sum of KShs. 300,000/=, the stay of execution would not take effect. In those circumstances, it would be upto the applicant to determine what further or other steps it could take. The court would not be expected to give directions in that regard, lest it be construed as descending into the arena, with a view to advising one of the adversaries in the case. That I decline to do."**

From that decision it can be clearly discerned that even prior to 5th October 2005, the applicant was asking the court for directions, but the court declined to direct the applicant on the steps to take. The issue was left in the hands of the applicant and his legal advisers.

Then, in the ruling dated 30th November 2005, the applicant revived its contention that the plaintiff had failed to raise the deposit sum of KShs. 300,000/=. That argument was largely pegged to the assertion that although the plaintiff deposited a cheque for KShs. 300,000/=, part of that amount was utilised by the court, on account of "**court collection charges".** According to the applicant, the deposit sum was less by KShs. 1,500/= which was the "**court collection charges."**

Notwithstanding the plaintiff's presentation of KShs. 1,500/= thereafter, the applicant had insisted that the deposit was still short, as the extra funds all went towards further court collection charges. My decision on that issue was as follows:

"**Personally, I was unable to trace any legal notice or practice note which would enable the High Court to charge collection charges of KShs. 1,500/= every time it collected money from any party to proceedings which were before the court. In the circumstances, I am unable to accept, as gospel truth, the respondent's assertion. And, that being the case, the respondent's only substantive line of objection to the orders sought by the plaintiffs, caves in."**

I then went on to confirm orders for the unconditional release of the vehicles which had been attached. I also ordered that there would be a stay of execution. And finally, I ordered the applicant herein to pay the costs of the application.

To my mind, those orders do not require any interpretation. In other words, they tell the applicant herein that it should not take any steps to execute in respect to the certificate of taxation. For that order to issue it means that the court was satisfied that the plaintiff had fulfilled the requirement that it deposits

KShs. 300,000/= as security. I trust that that is now clear enough to the 5th Defendant.

Meanwhile, as regards directions on the reference, the applicant asks the court for the following:

(a) An order that the file be sent to the taxing officer at the station where he is currently serving; or

(b) An order that any other taxing officer should give reasons for the decision of the taxing officer who had taxed the 5th Defendant's Bill of Costs; and

(c) An order that the Notice of Objection dated 18.5.05 was defective as it seeks a decision which the taxing officer had already given.

It is important to note that the "**Notice of Objection"** dated 18th May 2005 does not constitute a reference. Pursuant to the provisions of Rule 11 (1) of the Advocates (Remuneration) Order, any party who objects to the decision of the taxing officer is required to give a written notice within fourteen days. Therefore, as at 18th May 2005, the plaintiff had only given its notification as to its objection to the decision of the taxing officer.

After the issuance of that notice, by the plaintiff, the taxing officer was required to record and forward to the objector the reasons for his decision.

Once the taxing officer gives his reasons for the decision, the objector would have fourteen days within which to file an application by chamber summons. It is that application which is usually called a reference.

All those steps are clearly set out in Rule 11 of the Advocates (Remuneration) Order. Therefore, the applicant does not need the court to issue any more Directions on what should happen and when it should happen.

Of course, it defies logic to ask any taxing officer other than the one who had taxed the particular Bill of Costs, to give reasons.

In the event that the taxing officer who taxed the Bill of Costs herein had changed his work-station, the court could still not be required to issue any formal directions on what ought to be done. I am sure that the applicant will find Mrs C. Meoli to be more than equal to that administrative task.

Finally, I find strange, the applicant's request for an order that the taxing officer had already given reasons for his decision. I find it strange because the applicant would appear to be talking for the taxing officer. Surely, if the learned taxing officer had already given his reasons for the decision he had arrived at, there should be nothing easier than for him to say so.

In the circumstances, the 5th Defendant's application dated 16th May 2006 is without merit. It is therefore dismissed, with costs to the plaintiff.

Dated and Delivered at Nairobi this 21st day of September 2006.

FRED A. OCHIENG

JUDGE