

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Appeal 58 of 2006

NATIONAL HOUSING CORPORATION APPELLANT

VERSUS

TOM ODOYO T/A EQUITY (E.A) INVESTIGATIONS RESPONDENT

RULING

On 9/5/2006, the taxing master of the court delivered her ruling in a matter of taxation in High Court Miscellaneous Civil Application No. 56/2006 between Tom Odoyo t/a as Equity (E.A) Investigations, whom I shall now refer to as Odoyo, and the National Housing Corporation (“NHC”). The latter who felt aggrieved by the said decision, preferred its appeal against the whole ruling on 16/5/2006, and it raised a total of twelve grounds, most of which revolve around whether the advocate who appeared for Odoyo was properly on record, whether due notices had been issued for both the taxation and the subject ruling. It is also its ground that the quantum allowed was “*oppressive, unconscionable and unjust*”.

NHC subsequently moved this court on 19/7/2006 and obtained a temporary order of stay of execution of the aforementioned order of the taxing master, pending the hearing and determination of its application, for stay of execution of the said order pending the hearing and determination of its appeal. NHC which is of the view that Odoyo should have filed a suit for the recovery of the costs due to him instead of having his bills taxed, bases its application on several grounds, and it maintains that despite the fact that there is no decree which is capable of execution, and that the execution process an abuse of the process of the court, Odoyo has nevertheless proceeded and proclaimed its property and that in the circumstances, unless the order of stay of execution is confirmed, its appeal will be rendered nugatory, as Odoyo may not be in a position to refund the sum of Shs. 2,402,316.50, should its appeal succeed.

Odoyo who opposes the application has deposed that he had to have his bills taxed after NHC, which had initially instructed him to carry render services for it, failed to honour its obligation to pay for the said services; that the appeal by NHC has no chances of success. He also deposes that he is a man of means; with several properties and that he would be able to refund the sum should the appeal succeed.

Both counsel went into great length to show the merits and demerits of the appeal by NHC, but in my humble opinion, I must point out at the out set that at this stage it is not for me to look into the merits or demerits of the appeal, all that is required of me is to be satisfied that unless I grant the order which it seeks, substantial loss may result to it. I also need to be satisfied application has been made without unreasonable delay, which I have already confirmed was done. The other issue for would be for me to be satisfied that NHC is able to deposit such security as I may order for the due performance of such decree or order as may ultimately be binding. It is on record that Mr. Tuiyot confirmed that it would be willing to abide with whatever orders on security the court would make.

I find that NHC preferred its appeal within the stipulated time and further that this application was made within reasonable time.

I have in the circumstances taken the submission of both counsel into account, and it is, in my humble opinion apparent that the issue that Odoyo rendered services to NHC at its request is not denied. It also appears to me that the real bone of contention is the quantum of the taxation.

Given the above circumstances, I would allow this application and confirm the order of stay of execution pending the hearing and determination of the appeal, but only on condition that NHC pays

Odoyo the sum of K.Shs.1,201,158/25 being half of the taxed amount, within the next fourteen days, within which time it shall also be required to give a bankers guarantee for the payment of the balance.

Dated and delivered at Eldoret this 2nd day of November 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mrs. Manani for the applicant

Mr. Kitiwa for the respondent