



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

**Misc Appli 257 of 2003**

**SHAH & PAREKH.....APPLICANT**

**VERSUS**

**APOLLO INSURANCE CO. LTD.....RESPONDENT**

**RULING**

By its application of the 7th September 2004 the Applicant seeks an order for stay of execution of a decree or order. However, no decree or order is referred to and so far as I can ascertain no decree or order has been issued in this matter.

What the Applicants complain of is that pursuant to a certificate of taxation dated the 21st July 2003 a warrant of attachment was issued against the Respondent / Applicant by way of certificate of costs.

This application is brought under Rule 3 (1) (2) and (3) of the High court (Practice and Procedure) Rules Order XX1 rules 18 and 22 Order XX rule 7 of the Civil Procedure Rules, Section 63 and 3A of the Civil Procedure Act and Sections 48 and 49 of the Advocates Act. (Cap 16).

The Grounds of Opposition is that the Application is misconceived and an abuse of the process of the court and brought under irrelevant provisions of the law. A third ground is that the Applicant has soiled hands. I do not consider this last ground to be relevant as the reason that the Applicant refused to pay taxed costs cannot affect its right to object to the right, if any, of the Respondent to seek to execute a certificate of costs. So far as the provisions of the law relied on are concerned none of them give a right to the Respondent apart from Section 3A namely that the execution process is an abuse of the process of the Court.

Section 48(1) of the Advocates Act forbids an advocate from filing a suit to recover costs unless a bill has been delivered and one month thereafter has expired.

The reason for this suspension of a right to bring an action is to allow the client time to require the advocate to tax his costs.

Section 51 (2) of the Advocates Act states as follows:

The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not in dispute, an order that judgment be entered for the sum certified to be due with costs.

The court is the High Court.

I am of the view that before execution can issue in respect of a certificate of costs it is necessary for the court to make such order in relation thereto as it thinks fit. It is, therefore, necessary for an application to be made to the court for an order that judgment be entered in the sum taxed.

In this case there is no such judgment. I therefore stay the execution proceedings until such time as a judgment is so entered.

**DATED and DELIVERED at NAIROBI ON 4TH FEBRUARY 2005**

**P.J RANSLEY**

**JUDGE**