



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS**

Civil Case 5357 of 1993

MUA PARK INVESTMENTS LIMITED..... PLAINTIFF

VERSUS

**KENYA NATIONAL ASSURANCE COMPANY LTD.(IN LIQUIDATION).....
DEFENDANT**

AND

DEPOSIT PROTECTION FUND BOARDTHIRD PARTY

RULING

This Chamber Summons, dated 31.3.2004 seeks orders that:

1. This Court do set aside the order of the Deputy Registrar, dated 24.3.2004 striking out the Defendants Bill of Costs.
2. The Defendants Bill of Costs, dated 7.1.04 do proceed for taxation.
3. Costs of this application.

The application is brought under Rule 11 (2) of the Advocates (Remuneration) Order and Section 3A of Cap 21, Laws of Kenya; and is supported by an Affidavit of David Njogu of 7.4.2004 and on the grounds that:

- a) The Deputy Registrar acted without jurisdiction in striking out the defendant's Bill of Costs.
- b) The Deputy Registrar contravened the Decree made on 11.11.2003 which ordered the Plaintiff to pay costs of the suit to the Defendant.
- c) It is in the interest of justice that the order of the Deputy Registrar be set aside and the Defendant be allowed to tax its Bill of Costs as contemplated in the decree made herein.

In opposition, the Respondent/Plaintiff, in its Replying Affidavit dated 5.5.2004 avers that the Deputy Registrar after consideration of presentation by applicant's counsel, struck out the Defendants Bill of Costs in exercise of this judicial discretionary power. Further, the Plaintiff gave a Notice of Preliminary Objection, dated 25.05.2004 and filed on 27.5.2004 that the application herein is fatally defective and does not lie in law.

Upon perusal of the pleadings herein and the submissions by Learned Counsel for both parties, I

dismiss the application with costs to the Plaintiff/Respondent, on the following grounds:

It is the law that the Deputy Registrar is the Taxing Master, and in that capacity it is his/her duty to Tax the Bills of Costs pursuant to the courts decrees. However, in discharging those functions, the Taxing Master is bound by the legal provisions as contained in the Advocates Remuneration Order. The said order lays down the method of taxation – that is the items of taxation as therein stipulated.

If the Taxing Master finds no items of taxation, as anticipated under Rule 11 (1) and (2) of the Advocates Remuneration Order, he had nothing to tax, and under those circumstances it is not correct, legally or factually to alledge violation of this courts order/decreed that any party shall pay costs.

To recap, it is within the Deputy Registrar's jurisdiction to tax Bills of Costs. This is only so, however, if there are items for taxation. If there aren't, it is no violation of this court's orders/decrees to strike out the taxation Bill as presented by any party or its counsel.

The application is dismissed with costs to the Plaintiff/Respondent.

Dated and Delivered in Nairobi this 27th day of May 2005.

O. K. MUTUNGI

JUDGE