



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL DIVISION, MILIMANI**

**Civil Case 2655 of 1996**

**TRANSNATIONAL BANK LTD.....PLAINTIFF**

**VERSUS**

**ELITE COMMUNICATIONS LTD.....DEFENDANT**

**R U L I N G**

It is sought in prayer No. 3 of the notice of motion dated 25<sup>th</sup> April, 2005 that the Court be pleased to stay the execution of the order for costs herein dated 22<sup>nd</sup> April, 2005 pending the hearing and determination of the appeal herein. It is apparent from the record of the court that the order of 22<sup>nd</sup> April, 2005 did **not** award the costs in question. That order merely dismissed with no order as to costs the respective reference of each party against the taxation of costs granted by an order entered on 5<sup>th</sup> December, 2003. No costs were granted to any party by the order of 22<sup>nd</sup> April 2005, and in that respect this present application is misconceived.

However, if the aforesaid prayer no. 3 of the application was meant to be in respect to the order of costs of 5<sup>th</sup> December 2003, which costs were taxed at Kshs.478,060/85, I note that these costs have already been charged to the Respondent's advocates, Messrs. Amolo & Company, Advocates vide an order entered in that behalf on 17<sup>th</sup> May, 2005. That charging order was made under section 52 of the Advocates Act, Cap. 16. Granting the stay sought would therefore unduly prejudice the said Advocates who are not parties to these proceedings. Even the Respondent himself was not a party to the suit, and was brought in by the Plaintiff/Decree-Holder in an effort to lift the veil of incorporation of the Defendant/Judgment-Debtor and make the Respondent personally liable to satisfy the decree herein. It is that application that was dismissed with costs to the Respondent on 5<sup>th</sup> December, 2003. It is to be noted also that there was no appeal against that order of 5<sup>th</sup> December, 2003. The appeal in question here is against the order of 22<sup>nd</sup> April, 2004. It is now pleaded that if the appeal is successful the Respondent will not be able to refund any rebated costs (the appeal being essentially against the quantum of the taxed costs). This submission is unmeritorious. In the application dismissed on 5<sup>th</sup> December, 2003 the Plaintiff/Decree-Holder sought an order for the Respondent to personally satisfy a decree of over Kshs.27 million. How can it now say that the Respondent would not be able to refund an amount less than half a million?

For the above reasons the application is refused. It is dismissed with costs. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY, 2005.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 29TH DAY OF JULY, 2005.**