

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 18 of 2004

DONHOLM RAHISI STORES (suing as a firm) PLAINTIFF

VERSUS

EAST AFRICA PORTLAND CEMENT LIMITED DEFENDANT

R U L I N G

On 11th February, 2005 the court awarded costs herein to one **MOHAMED MAHAT KUNO** (who had been sued as defendant in the counterclaim lodged by the Defendant, **EAST AFRICA PORTLAND CEMENT LIMITED**) for defending the counterclaim. The counterclaim had been subsequently withdrawn as against him by way of amendment of pleadings. I gather that the said Mohamed Mahat Kuno (hereinafter called KUNO) subsequently filed his bill of costs for taxation.

The Defendant has applied by notice of motion dated 13th April, 2005 for an order that there be stay of further proceedings and in particular the taxation of the bill of costs of the said Kuno. The application, stated to be brought under section 3A of the Civil Procedure Act, Cap. 21 and also under Order 50, Rule 1 of the Civil Procedure Rules, is based upon the grounds:-

- (a) that the Defendant has filed a notice of appeal against the decision of 11th February, 2005 which granted Kuno costs;**
- (b) that the intended appeal is arguable; and**
- (c) that, in effect, the balance of convenience is in favour of granting the order sought.**

The application is opposed upon the grounds set out in the grounds of objection dated 16th April, 2005. Those grounds are, broadly, that the court has no jurisdiction in law to grant the stay sought; that in effect, the application is misconceived and incompetent; and that the application is an abuse of the process of the court intended to delay justice to Kuno.

When the application came up for hearing on 3rd May, 2005 learned counsel for Kuno raised a preliminary objection to the application on a point of law, that point being that the court has no jurisdiction in law to stay a taxation that is rightly before a taxing officer. The preliminary objection was opposed on behalf of the Defendant. I have considered the submissions of the learned counsels appearing. Taxation of costs, whether those costs be between party and party or between advocate and client, is a special jurisdiction reserved to the taxing officer by the Advocates (Remuneration) Order. The court will not be drawn into the arena of taxation except by way of reference (from a decision on taxation) made under Rule 11 of the Advocates (Remuneration) Order. The present application is not such reference. The application seeks an order that would have the effect of interfering with the special jurisdiction of the taxing officer, a jurisdiction that the court cannot take upon itself. The taxing officer does nothing beyond taxation of the bill of costs. The consequences of such taxation, for instance recovery of the taxed costs, will be a matter for the court, and the court can at that stage be asked to stay recovery of those costs pending whatever event, say, an appeal against the order granting the costs, or a reference under Rule 11 of the Advocates (Remuneration) Order. The present application is not for stay of recovery of taxed costs. To stay taxation of costs that have been duly awarded would be an unacceptable assault upon the special jurisdiction of the taxing officer. No jurisdiction to order such stay has been conferred by the Advocates (Remuneration) Order which is the code of law governing all matters of taxation of costs. In my view the inherent jurisdiction of the court cannot properly be inferred

to include the jurisdiction to intervene in the jurisdiction of another judicial officer. Such interventionist jurisdiction must be expressly conferred by law.

I am fortified in this view by the decision in the **case of SHARMA –VS- UHURU HIGHWAY DEVELOPMENT LTD. (2001) 2 EA 530**. In that case the Court of Appeal declared that the proceedings before a judge of the High Court to strike out an application for taxation of an advocate/client bill of costs and the order the judge made to strike out the application for taxation, were a nullity for want of jurisdiction. One of the learned judges of appeal (Akiwumi, J.A.) stated:-

“... (the High Court Judge), not being seized of the taxation itself, and there being no appeal or reference to him as provided for by paragraphs 11(1) and (2) and 12 of the Advocates (Remuneration) Order from a decision of the Taxing Officer who was dealing with the taxation, and the taxation not being a suit filed in the High Court for the recovery of costs, simply had no jurisdiction at all, to hear as he did, the Respondent’s application to strike out the (application for taxation). This by itself makes his hearing of, and his ruling of 19th May, 2000, of the Respondent’s application a nullity from the word go...”

I therefore hold that the court has no jurisdiction to order stay of the taxation. The application by notice of motion dated 13th April, 2005 is thus misconceived and incompetent. It is hereby struck out with costs to the Respondent. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF JULY, 2005.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 8TH DAY OF JULY, 2005.