



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

Civil Suit 52 of 2002

SPORTSCARS LIMITED.

KINGSWAY (K) LIMITED

HILLVIEW HOLDINGS LIMITED.....

.....JUDGMENT/DEBTORS

VERSUS

THE DEPOSIT PROTECTION FUND

**TRUST BANK LIMITED (in Liquidation).....DEFENDANT/DECREE
HOLDERS**

R U L I N G

As I begin to consider the ruling of the application by the plaintiff dated 28th September 2004 I must say I have never come across a matter that has either deliberately or otherwise been confused.

It is clear that the plaintiff was at the time of filing of this suit, represented by the firm of Muchai – Muluwa advocates.

On a preliminary objection being raised by the defendants Hon Osiemo J, dismissed the plaintiff's suit with costs, on 7th March 2003.

On 20th March 2002, the 2nd defendant filed its bill of costs and the same was taxed on 24th April 2002 for kshs 3, 084, 588/-.

The 1st defendant filed its bill of costs on 12th April 2002.

The plaintiff through the firm of Muchai – Mulwa advocates filed on 2nd May 2002 a Notice of Objection to taxation and also requested for reasons. The plaintiff again on 3rd May 2002 through the same firm repeated the filing of objection to taxation of items that were enumerated thereon.

On 2nd May 2002 the plaintiff, through that same firm of advocates, filed an application seeking stay of execution, for costs pending referral to a judge of objection to taxation. The plaintiff in that

application did not specify which defendant's costs it was seeking to stay.

In a ruling delivered on 4th day of June 2002 Hon Justice Osiemo, the period of filing a reference was enlarged for the plaintiff by 14 days from the time the reasons would be supplied by the taxing master.

For some strange reasons, and highly irregular on the 5th of July 2002 1st defendant filed another bill of costs see paragraph 71 of the Advocates (Remuneration) Order.

The taxing master gave written reasons of the taxation on 29th September 2002. These reasons do not indicate which defendant's bill was taxed on that date, and in any case in my perusal there was no taxation that took place on that date. That date of taxation was corrected when the reasons were re typed with a dated inserted of 26th September 2002.

The plaintiff through the same firm of advocates on 29th May 2003 filed an application for stay of execution, to reinforce the order of stay granted by Hon Justice Osiemo. A stay in terms of the application was granted on 20th May 2003.

By a letter dated 8th July 2003 the firm of Muchai – Mulwa advocates were given notice to collect the reasons of the taxing master.

On 10th July 2003 the firm of Muchai – Mulwa without indicating which defendant's bill of costs was being objected filed a notice of objection.

By a letter filed in court on 8th July 2003, the firm of Lang'at & Wandabwa advocates, wrote to the Deputy Registrar seeking reason for taxation of 1st defendants bill of costs. This firm did indicate, that they were leading the firm of Muchai – Mulwa advocates. That as it may be they were not formally on record and hence were strangers in this matter.

By a letter dated 24th July 2003, the firm of Lang'at & Wandabwa, was notified that the reasons were ready for collection.

By a letter dated 14th October 2003 the firm of Muchai – Mulwa were requested to collect reasons for taxation.

By an application dated 5th December 2003 the firm of Lang'at & Wandabwa filed an application on behalf of the defendant's on the face of it, but sought to stay execution by the defendants. A temporary order was granted in terms of the prayers but what is interesting is that the firm of Lang'at & Wandabwa, as far as I can tell was not on record.

By a ruling of the Hon Justice Mwera of 22nd October 2003, the court ordered as follows: -

“That the plaintiffs/Applicants do file their objection to the second defendants bill of costs based on the deputy registrar's letter dated 1st October 2002, within seven (7) days.”

On 13th February 2004 when the application dated 5th December, 2003 came up for hearing inter partes the Hon Justice Mutungi granted an order of stay of execution and directed the Deputy Registrar to give reasons for taxation.

By a letter dated 14th September 2004 the firm of Lang'at & Wandabwa was notified that the reasons for taxation were ready for collection.

On 28th September 2004, the plaintiff through the firm of Lang'at & Wandabwa filed the

application, which was argued before me.

That application is under Rule 11 (2) of the Advocates (Remuneration) order. It seeks an order as follows:

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“That this Honourable court may be pleased to review and/or set aside the Deputy Registrar’s ruling on the 2nd defendants bill of costs on 1st October 2002.”

I have taken the trouble to go through the file so as to display the confusion, which exists in this file, which confusion is not clear to me whether it is not deliberate on the part of the plaintiff. If ever a court process was abused it is here in this matter.

Firstly the firm of Lang’at & Wandabwa have never filed a Notice of Appointment which they would need leave for, since judgment in terms of the dismissal of the suit is on record.

On that basis alone, the application should and will be dismissed.

However looking at the prayer in the application argued before me, the same does not relate to facts as detailed herein above. The 2nd defendants bill of costs was taxed on 24th April 2002, for kshs 3, 084, 588/-.

The plaintiff all along, as the web of confusion has been woven on its behalf, sat on orders of stay of execution. The court has an inherent power to stop an abuse of its process and that power can extend to discharging orders of stay obtained by a firm of advocates who is not on record.

The plaintiffs have three times obtained an order for reasons to be given, and twice they were given a limited period to file their reference. The record shows that numerous times, the plaintiffs were notified that these reasons were available for collection.

The plaintiff has abused the court process for far too long. This suit was dismissed with costs to the defendants on 7th March 2003. It is time to bring that abuse to an end.

The orders of this court are as follows: -

- (1) The application dated 28th September 2004 is hereby dismissed with costs to the 2nd defendant.**
- (2) That stay of execution of the defendants costs granted herein severally are hereby discharged, for the avoidance of doubt the defendants may proceed to execute for their costs hereof.**

Dated and delivered this 17th day of August 2005.

MARY KASANGO

JUDGE