



**Republic v Director of Prosecutions & 3 others; Shah & 3 others
(Applicant); Bank of Baroda (Kenya) Ltd (Interested Party) (Judicial
Review E3 of 2021) [2023] KEHC 18474 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18474 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW E3 OF 2021
HK CHEMITEI, J
JUNE 15, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR OF PROSECUTIONS & 3 OTHERS RESPONDENT

AND

HASMUKH R SHAH & 3 OTHERS APPLICANT

AND

BANK OF BARODA (KENYA) LTD INTERESTED PARTY

RULING

1. In their chamber summons dated October 3, 2022 the applicants prayed for the following orders that;
 - (a) Pending the giving of reasons by the deputy registrar there be stay of execution of the taxed costs.
 - (b) Upon giving of reasons by the deputy registrar there be stay of execution of the taxed bill of costs pending the hearing and determination of the reference.
 - (c) The court does set aside the deputy registrars ruling dated September 20, 2022 taxed at kshs 45,406,105.
 - (d) This court be pleased to give directions that the items in the interested party’s bill of costs be taxed in accordance with the law.



- (e) This court does give directions that the learned deputy registrars orders of September 20, 2022 awarding the interested party costs is unlawful.
- (f) This court be pleased to remit the matter for taxation of the interested party's party and party bill of costs claimed herein with appropriate directions as to the correct approach to take in taxation of the entire bill of costs.
2. The applicant also prayed for costs of the application.
 3. The application is premised on the grounds on the face thereof and the sworn affidavit of Kiongo P Murimi the counsel for the applicant.
 4. What is easily deduced from the application and the affidavit is that the applicant's application was dismissed on April 7, 2021 and costs awarded to the other parties. The interested party filed a bill of costs which the deputy registrar taxed at kshs 15,276,692 and not kshs 45,406,105 as earlier communicated to the parties.
 5. The applicants being dissatisfied with the same proceeded to file the reference and sought stay in the current application. Generally, they are of the opinion that the deputy registrar misdirected herself in arriving at the said figures. That the said Deputy Registrar failed to take into account their submissions and awarded excessive and high figures.
 6. Consequently, the applicants pray that a stay order be granted pending the determination of the reference otherwise they stand to suffer loss and damage.
 7. Renny Langat, advocate for the interested party in his replying affidavit sworn on November 7, 2022 objected to the application on the grounds that the same was not meritorious. He deponed that the figures which the deputy registrar corrected were kshs 15,276,692.
 8. That the deputy registrar arrived at the said figures lawfully and was almost in agreement with what the applicants had submitted. He therefore on behalf of his client prayed for the application to be dismissed.
 9. The court has perused the application as well as the short ruling by the deputy registrar. It is true that when a party is dissatisfied with the findings of the taxing master a reference which is essentially an appeal is filed to this court. The applicants have exercised this right and have filed the reference. Their prayer however among others is seeking stay of execution pending the outcome of the said reference.
 10. The court has perused the proceedings before the taxing master and in particular the applicant's submissions. It is true as submitted by the counsel for the interested party that the amount arrived at by the deputy registrar is almost the amount the applicants had submitted namely kshs 15,273, 871. The instruction fees they had submitted and in their view commensurate was kshs 11,450,000.
 11. I therefore find it difficult especially after the deputy registrar had communicated the correct figures to agree with the applicant's point of view. In any case they have not demonstrated that the interested party will not be in a position to repay the sum in the event that they succeed in their reference.
 12. The application is otherwise dismissed with costs to the interested party.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 15TH DAY OF JUNE 2023.

H. K. CHEMITEI.

JUDGE

