



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISCELLANEOUS CASE NO. 15 OF 2016**

**NGATIA & ASSOCIATES. ADVOCATES.....ADVOCATE**

**-VERSUS-**

**INTERACTIVE GAMING AND LOTTERIES LIMITED.....CLIENT**

**RULING**

1. There is pending before this Court the taxation of the Advocate/Client Bill Costs filed by Ngatia & Associates (the Advocate).
2. This Court by its ruling dated 29<sup>th</sup> November 2018 dismissed a Preliminary Objection raised by Interactive Gaming and Lotteries Ltd (the Client). The Client was aggrieved by that ruling and filed on 3<sup>rd</sup> December 2012 a Notice of Appeal against that ruling.
3. The Client has now filed a Notice of Motion application dated 4<sup>th</sup> December 2018. By that application the Client seek orders:
  - a) *That the Court be pleased to grant the Respondent (Client) leave to appeal the decision of the Court delivered on 29<sup>th</sup> November 2018.*
  - b) *That the Court be pleased to order a stay of taxation proceeding before the Deputy Registrar pending g the filing and determination of the intended appeal.*
4. That application is supported by the grounds that the Client intends to appeal and has indeed filed a Notice of Appeal; that amongst the grounds of appeal the Client will raise in its appeal is that this Court erred in finding the Preliminary Objection was incompetent; that this Court's decision has curtailed the Client's right to access to justice; and that it is prudent use of judicial time to stay taxation of the Bill of Costs.
5. The application is opposed by the Advocate who stated, in his grounds of opposition, that the application is without merit; that the services, the subject of the Bill of Costs, were rendered in the year 2011; that the appeal is unlikely to be heard this year; that decision having been made on a preliminary point, it is undesirable to allow an appeal on interlocutory matter; and that the Client has not demonstrated substantial and irreparable loss.
6. I have considered the application, the affidavit evidence, grounds of opposition and authorities. Having considered those documents before me I will, in exercise of my discretion grant leave, as sought, to the Client to file an appeal against this Court's ruling.
7. However on the stay the Client did not present before this Court, what if any substantial loss it will incur if stay of taxation is not allowed. The Client having failed to place before me any material on which I can exercise my discretion the prayer for stay of taxation fails.
8. The Client having partially succeeded in its application I order that the costs of that application do abide with the outcome of the intended appeal.
9. In the end these are the orders of this Court:
  - a) **Interactive Gaming & Lotteries Ltd, the Respondent, is granted leave to file an appeal against the ruling of 29<sup>th</sup> November 2018.**
  - b) **The costs of the Notice of Motion dated 4<sup>th</sup> December 2018 shall abide with the outcome of the Respondent's appeal.**

DATED, SIGNED and DELIVERED at NAIROBI this 9<sup>TH</sup> day of MAY, 2019

MARY KASANGO

JUDGE

***Ruling Read and Delivered in Open Court in the presence of:***

Sophie.....COURT ASSISTANT

.....FOR THE ADVOCATE

.....FOR THE CLIENT