



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 60 OF 2015

KENYA COMMERCIAL BANK LIMITED.....PLAINTIFF

- VERSUS -

STAGECOACH MANAGEMENT LIMITED.....DEFENDANT

RULING

1. The application before me is for the stay of these proceedings until the plaintiff pays to the defendant the costs in the case **KENYA COMMERCIAL BANK LIMITED Vs STAGECOACH MANAGEMENT LIMITED Hccc No. 45 of 2012**.
2. As is clear from the case herein, the parties to this case are exactly the same as in that other case.
3. On 7th August 2014, the court dismissed **Hccc No. 45 of 2012**, and ordered the plaintiff to pay costs to the defendant. The reason for the dismissal of the suit was that it had been instituted without a resolution by the company, authorizing the filing of the case.
4. There was also no resolution authorizing or appointing the Law Firm of **S.N. GIKERA & ASSOCIATES** to file the suit.
5. Thirdly, even after the defendant had raised a Preliminary Objection to the suit, the plaintiff did not pass a Resolution to ratify what had already been done.
6. The defendant now complains that the plaintiff has filed the current suit, yet the plaintiff had not yet paid the defendant the costs awarded to them.
7. According to the defendant, the plaintiff had become evasive when called upon to pay the costs.
8. But when responding to the application, Miss Ndhiwa, the learned advocate for the plaintiff, told the court that the plaintiff had no problem in settling the fees.
9. According to the plaintiff, the seeming delay in settling the costs was attributable to the fact that the defendant only served the plaintiff with the Certificate of Costs on 2nd November 2015.
10. It is the plaintiff's case that there ought to have been a taxation of the party and party costs, which would have led to the issuance of a Certificate of Taxation.

11. The defendant had lodged an application in court seeking a stay of execution in **Hccc No. 45 of 2012** until the application challenging the Certificate of Costs was determined.

12. The plaintiff had also asked the court to set aside the Certificate of Costs.

13. On 8th April 2016, C. Kariuki J. dismissed the defendant's application.

14. Following the rejection of the defendant's application for stay of execution, there is nothing that can now stop the defendant from proceeding with execution against the plaintiff, in **Hccc No. 45 of 2012**.

15. I appreciate that the Ruling of Kariuki J. was made after the defendant had lodged the application herein.

16. The defendant had indicated, in the grounds upon which this application is founded, that the issuance of the warrants of attachment was stayed pending the determination of the plaintiff's application dated 10th December 2015.

17. The application has now been dismissed, paving the way for the defendant to execute the Order flowing from the Certificate of Costs.

18. Therefore, I find no reason why the defendant cannot simply take steps towards execution, unless the plaintiff settles the costs in **Hccc No. 45 of 2012** prior to the said process of execution.

19. In effect, there is no reason in law or in fact to justify the stay of the proceedings in this case.

20. Accordingly, I decline to stay these proceedings.

21. However, I hold the considered view that the plaintiff cannot be awarded the costs of the application dated 5th February 2016, because that would tantamount to rewarding the plaintiff, who is yet to settle the Certificate of Costs in **Hccc No. 45 of 2012**.

22. Accordingly, I order that each party will meet its own costs of the application dated 5th February 2016.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd day of January 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Kiiru for Miss Ndhiwa for the Plaintiff

Miss Wambui for Mbichire for the Defendant

Collins Odhiambo – Court clerk.