



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 25 OF 2015

**IN THE MATTER OF: ARTICLES 22, 23, 40, 47, 48, 60 AND 165(3) OF CONSTITUTION OF
KENYA 2010**

AND

IN THE MATTER OF: PART III OF THE LAND ACT 2012

AND

IN THE MATTER OF: THE REGISTRATION OF LAND ACT 2012

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS TO OWN PRIVATE
PROPERTY**

BETWEEN

**DIRECTORS AND SHAREHOLDERS OF NAKUMATT INVESTMENTS
LIMITED...PETITIONERS**

AND

1. COUNTY GOVERNMENT OF MOMBASA

2. NATIONAL LAND COMMISSION (NLC).....RESPONDENTS

RULING OF THE COURT

The Application

1. The Notice of Motion application dated 8th February, 2017 seeks to stay orders of taxation issued on 27th January, 2017 on the grounds that the Taxing Master has not given reasons for his/her decision in accordance with provisions of Section 11(2) of the Advocates (Remuneration) Order, Cap 16 Laws of Kenya. The Respondent is alleged to have extracted certificate of costs, lodged the same at the Registry and the same has been signed, sealed and issued on 1st February, 2017. The Petitioners/Applicants are apprehensive or worried that any time from now the Respondent may apply for execution of the decree. Unless the orders are given the reference herein will be rendered nugatory. The application is supported

by affidavit of **Atul Shah** sworn on 8th February, 2017.

The Response

2. The application is opposed by a replying affidavit sworn by **Jimmy Waliaula** on 10th February, 2017. The Respondent's case is that the Petitioner already knows the reason given by the Taxing Master for the taxation. The Respondent refers to the notice filed by the Petitioner on 30th January, 2017 wherein the Petitioner states that its objection is to the Taxing Master's reasons given to justify the taxing of certain items of the bill of costs. Further, the Respondent states that the Petitioner is challenging the Taxing Master's decision based on the Ruling delivered on 27th January, 2017, and that that is indeed the reason why the Petitioner did not apply for any reasons or further reasons to be given by the Taxing Master. For that reason the Respondent submitted that there is no good reason given by the Petitioner for failure to file its reference in this court since 30th January, 2017. The Respondent's case is that the Petitioner is merely filing this application to buy time instead of filing a reference so as to dispose off the issues once and for all. The Respondent further submitted that the Petitioner did not challenge or object to the Bill of Costs filed by the Respondent and it was also not interested in applying for stay of execution upon delivery of the Ruling on 27th January, 2017. The Respondent's case is that the Petitioner shall not suffer any prejudice if the application is dismissed, noting that the Petitioner has also not provided any security for stay to be granted.

3.The Determination

I have considered the application and the opposing affidavits. The issue I raise for the determination is whether good reasons have been advanced to enable the court allow the application. It is true that the Petitioner did not challenge the Bill of Costs. That however, does may mean that the Petitioner lost or waived its right to challenge the outcome should the outcome be what the Petitioner did not expect. A Petitioner, believing that the Taxing Master will do the right thing and tax the Bill correctly is entitled to believe in that good will and leave the matter for the Taxing Master. But having done that, a Petitioner who later realizes that the Taxing Master did not do the right thing is entitled to ask the Taxing Master to provide reasons for taxation. This is what the Petitioner did. Now, it has been suggested by the Respondent that the Petitioner already knew the reasons for taxation from the Ruling delivered on 27th January, 2017. That may be true. But it is also true that where a Petitioner has specifically asked for the reasons for taxation the same must be given to enable the matter move forward. It therefore cannot be the case that a Petitioner is deemed to know the reasons. No! Reasons must be provided as requested. It may be the case that the Taxing Master can reply that the reasons are in the Ruling in which case the Petitioner would be entitled to re-read the said Ruling to point out the reasons. So it is the finding of the court that the Petitioner is entitled to the said reasons.

4 The above notwithstanding, the Petitioner has since filed the reference herein on 17th February, 2017. In the view of this court, the application for stay herein ought to be allowed principally for two reasons: **one**, that the Petitioner has now filed a reference which ought to be determined on its merits and which will be rendered nugatory if the stay is not given, and **secondly**, the taxed amount herein being over Kshs. 26,000,000/= is not a small amount of money and the Petitioner is entitled to pay the same having made sure that adequate due process took place.

5. For the foregoing reasons I allow the application dated 3rd February, 2017 with costs to be in the Petition or Reference.

Orders accordingly.

Dated, Signed and Delivered in Mombasa this 14th day of March, 2017.

E. K. O. OGOLA

JUDGE

In the presence of:

Were for Petitioner

Mr. Khagram holding brief Mwangi Njenga for 1st Respondent

Mr. S. Kaunda Court Assistant