



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 645 OF 2000**

**EQUITY BANK LIMITED.....PLAINTIFF**

**VERSUS**

**CAPITAL CONSTRUCTION LIMITED.....1<sup>ST</sup> DEFENDANT**

**VANKATA CHAILULU GANTI.....2<sup>ND</sup> DEFENDANT**

**PRASAD GANTI.....3<sup>RD</sup> DEFENDANT**

**AL KARIM BADRUDIN SUNDERJI.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff has moved the court by way of a Notice of Motion dated 8<sup>th</sup> October 2014. The said application seeks the dismissal of the Bills of costs dated 24<sup>th</sup> July 2014 and 3<sup>rd</sup> September 2014. The said Bills of costs were filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, respectively.
2. The plaintiff has indicated that the Bills of costs which it seeks to have dismissed, were annexed to the affidavit in support of the application.
3. A perusal of the attachments annexed to the affidavit of **JOHN NJENGA**, the plaintiff's General Manager, Legal Services, reveals no Bill of costs dated either 24<sup>th</sup> July 2014 or 3<sup>rd</sup> September 2014.
4. The Bills of costs which were annexed were both dated 25<sup>th</sup> July 2014, and were filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The Bill of costs filed by the 3<sup>rd</sup> Defendant was not annexed to the supporting affidavit.
5. When canvassing the application, Mr. Ogot, the learned advocate for the plaintiff, submitted that the Respondents had filed a Bill of costs on behalf of the 4<sup>th</sup> Defendant, **AL KARIM BADRUDIN SUNDERJI**. That Bill of costs had, reportedly, been taxed in the sum of Kshs. 7,000,000/-, which the plaintiff subsequently paid in full.
6. Thereafter, the Law firm of Kamwendwa Advocates is said to have filed Bills of costs for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The plaintiff told me that it challenged those Bills of costs. However, the plaintiff did not specify the nature of the challenge that it mounted against the Bills of costs which were filed by N.M. Kamwendwa Advocates.
7. Mr. Ogot advocate indicated that the Law firm of Otieno Ragot & Company Advocates applied to the court, seeking the striking out of the Bills of costs that had been lodged by N.M. Kamwendwa Advocates.
8. The plaintiff told this court that Havelock J. dismissed the application of Otieno Ragot &

Company Advocates.

9. Being dissatisfied with the decision of Havelock J, Otieno Ragot & Company Advocates are said to have mounted a successful appeal. According to the plaintiff, the Court of Appeal did order that the taxation of the Bills of costs filed by N.M. Kamwendwa Advocates, be stayed. The order for stay of taxation was said to have remained in place until the time when the current application was being canvassed before me.
10. In the light of the order for stay, the plaintiff submitted that the process which Mr. Nyakundi undertook, to tax the 2<sup>nd</sup> Defendant's Bill of costs was a nullity *ab initio*.
11. In any event, the plaintiff believes that Section 62 of the Advocates (Remuneration) Order proscribes the filing of a multiplicity of Bills of costs by one advocate.
12. It was for that reason that the court was invited to dismiss the Bills of costs of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
13. In answer to the application, Mr. Otieno Ragot, the learned advocate for the Defendants, submitted that this court lacked jurisdiction to dismiss the Bills of costs.
14. I was told that on 22<sup>nd</sup> September 2014, the learned Deputy Registrar did undertake the taxation of the 2<sup>nd</sup> defendant's Bill of costs.
15. According to the respondents, if the plaintiff had any issue regarding the 2<sup>nd</sup> Defendant's Bill of costs, it should have raised the said issues before the Taxing Officer. Thereafter, if the plaintiff was dissatisfied with the decision of the Taxing Officer, it could have moved the High Court through a reference.
16. It is well settled that the Advocates (Remuneration) Order is a complete code for the determination of issues regarding the taxation of costs.
17. In this case, the plaintiff was served with a Notice of Taxation, which notified it that the 2<sup>nd</sup> Defendant's Bill of costs was scheduled for taxation on 22<sup>nd</sup> September 2014.
18. Having been duly notified, the plaintiff should have attended before the learned Deputy Registrar, at the assigned hour. That would have been the appropriate forum at which the plaintiff would have drawn the attention of the Taxing Officer, to the orders for stay of taxation.
19. By keeping away from the Taxing Officer, when it was well aware that taxation was scheduled to take place, the plaintiff deprived the Taxing Officer of relevant information, concerning the orders which the Court of Appeal had made.
20. In those circumstances, the plaintiff must bear the responsibility for its failure to draw the attention of the Taxing Officer to the orders made by the Court of Appeal.
21. Secondly, after the Taxing Officer has carried out his or her duty, in the taxation of a Bill of costs, any party who feels aggrieved either by the results of the taxation or by the procedure utilized, can only challenge such a decision through filing a Reference before the High Court Judge.
22. Therefore, to the extent that the Bill of costs of the 2<sup>nd</sup> Defendant had already been taxed, the plaintiff erred by seeking to have the said Bill of costs dismissed.
23. The plaintiff has not brought to my attention the orders which the Court of Appeal had granted, staying either taxation or staying further proceedings in this case. Therefore, I am unable to verify the nature and scope of any orders which the Court of Appeal made. The plaintiff has only itself to blame for not making known the particulars of the said orders.
24. In any event, the plaintiff had pointed out that it was the firm of Otieno Ragot Advocates which had appealed against the decision of Havelock J. The learned Judge had rejected the Law firm's objection to the manner in which M/s N.M. Kamwendwa & Company Advocates had taken over the task of representing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The decision of Havelock J. would have enabled N.M. Kamwendwa & Company Advocates to proceed with the task of having the Bills of costs for the three (3) defendants taxed.
25. Therefore, in my understanding, if the Court of Appeal accepted the arguments of M/s Otieno Ragot & Company Advocates, that could have resulted in the stay of the intended taxation of the Bills of costs which had been filed by N.M. Kamwendwa & Company Advocates.
26. My said views are not founded upon material which the parties had placed before me; but upon my logical evaluation of the only facts that are available.
27. In the premises, the plaintiff has failed to discharge its onus of proving its assertion, that the Court of Appeal had stayed all further proceedings in the case.
28. In any event, it is not quite clear to me what the dismissal of a Bill of costs constitutes. I say so

because a Bill of costs is not an application. It is the presentation of an itemized list of the costs which the party wishes to have the Taxing Officer direct the other party to pay to the party presenting the Bill.

29. By the time a party was presenting a Bill of costs for taxation, there would ordinarily have been an order already made, directing that a particular party should pay the costs.

30. I therefore find no basis in law or in fact to grant the reliefs sought by the plaintiff. Accordingly, the application dated 8<sup>th</sup> October 2014 is dismissed. The plaintiff will pay the costs thereof to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

**DATED, SIGNED and DELIVERED at NAIROBI this 2<sup>nd</sup> day of February 2015.**

**FRED A. OCHIENG**

**JUDGE**

***Ruling read in open court in the presence of***

..... for the Plaintiff.

.....for the 1<sup>st</sup> Defendant.

.....for the 2<sup>nd</sup> Defendant.

.....for the 3<sup>rd</sup> Defendant.

.....for the 4<sup>th</sup> Defendant.

Collins Odhiambo – Court clerk.