



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 631 OF 2012 (Formerly HCCC No. 2863 of 1996)

PAUL GACHANGA NDARUA :::::::::::::::::::::::::::::: PLAINTIFF/APPLICANT

VERSUS

KENYA POSTS & TELECOMMUNICATIONS

CORPORATION :::::::::::::::::::::::::::::: DEFENDANT/RESPONDENT

RULING

1. Before the court is a Notice of Motion dated **26th February 2011** filed by the Defendant seeking as the main order the issuance of an order for stay of proceedings pending hearing and determination of an appeal.
2. The application is premised on the grounds stated therein that the Applicant intends to lodge an appeal against the judgment of this court given on 20th June 2014 and has to that effect filed a Notice of Appeal dated 1st July 2014 and has also request for proceedings. In the meantime the Respondent is likely to tax its bill of costs which would be difficult to recover if the appeal succeeds. The application is also supported by the affidavit of the Plaintiff sworn on 26th February 2015.
3. The Respondent opposed the application through Grounds of Opposition filed in court on 29th April 2015. In its opposition to the application the Respondent states that the application has been brought after a lapse of 8 months, an inordinate delay which has not been explained. Further the Respondent states that the Plaintiff has not shown that there is sufficient cause to stay the taxation of the Defendant's costs and that the Applicant has not shown what prejudice he is likely to suffer if the order of stay is not granted.
4. Parties filed submissions to the application which I have considered. There is only one issue for determination, and that is, whether there are any further proceedings to be stayed in this matter. It is to be noted that the proceedings which were taking place at the time this application was filed in February 2015 were those of taxation. This court, in a Ruling made on 9th June 2015 directed that the said taxation shall proceed but that a certificate of taxation shall not issue until this Ruling is delivered.
5. Since this court has no jurisdiction to interfere with a taxation process except in the matter of a reference, where an aggrieved party comes to this court to challenge the finding of a Taxing Officer, it is my finding that indeed there are no current proceedings to be stayed. This means that the Taxing Master

has the liberty to proceed with the taxation process and to issue a Certificate of Taxation. It is the events which may proceed after the Certificate of Taxation is issued that may create proceedings capable of being stayed. We cannot speculate about those events. It may as well be that when a Certificate of Taxation is issued, after the amount due to the Defendant is ascertained, the Plaintiff may as well pay the costs. What I am saying is that the Plaintiff can only seek to stay execution proceedings, if there are any. Until such a situation arises, there are no proceedings before this court capable of being stayed.

6. In the upshot the Notice of Motion application dated 26th February 2015 is dismissed with costs in the cause.

7. The Taxing Master is at liberty issue Certificate of Taxation herein.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 2ND DAY OF OCTOBER 2015

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Mwendu holding brief for Kethi for the Plaintiff

M/s Alluvale holding brief for Murugara for the Defendants

Teresia – Court Clerk