



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KISUMU**

**Miscellaneous Civil Application 58 of 2011**

**GERALD O. KIMANGA T/A KIMANGA & CO .....ADVOCATES  
/APPLICANT  
VERSUS**

**CHARLES K. TANUI .....CLIENT /  
RESPONDENT**

**RULING**

By a Notice of Motion dated 4<sup>th</sup> April 2012 the applicant prays for the following orders:-

- (a) That this application be certified as urgent and be heard exparte at the first instance.**
- (b) That leave be granted by the Honourable Court to hear this matter during vacation.**
- (c) That pending the hearing and determination of this application inter partes, there be granted a temporary order of stay of execution of the decree dated 23<sup>rd</sup> February 2012.**
- (d) That pending the hearing and determination of the Respondent's intended appeal and/or application against the decision of the Taxing Officer dated 29<sup>th</sup> April 2011 to the Honourable Judge there be granted a stay of execution of the Orders of 23<sup>rd</sup> February 2012.**
- (e) That costs be in the cause.**

The same is supported by his affidavit sworn on 4<sup>th</sup> April 2012. The basic argument is that he is dissatisfied with the orders of the taxing master which awarded the respondent the sum of Kshs. 855,959.70. The taxing Master order has already been adopted as the decree of the court.

When this matter came up for hearing I ordered that the taxing master do give his reasons which he did by the letter dated 25<sup>th</sup> June 2012.

The respondent on the other hand has filed a replying affidavit dated 18<sup>th</sup> May 2012 opposing the said application. In the said affidavit his argument is that the applicant has not been keen enough to pursue the taxing master so as to get the reasons and thereafter to process the reference.

Having perused the pleadings herein I find that the delay in prosecuting the reference was not on the part

of the applicant. However now that the taxing officer has given his reasons this matter has to move forward.

The respondent had a decree in his favour which he needs to enjoy its fruits.

I do therefore note the following orders:-

- (1) There be stay of execution against the applicant pending the hearing and determination of the reference.**
- (2) The applicant do proceed to file the reference and fix it for hearing within the next twenty one (21) days from the date of this Ruling .**
- (3) The applicant do deposit in court title deed for land parcel number Nandi / Chebilat / 703 with the Deputy Registrar within the next twenty one days from the date herein.**
- (4) The applicant is injuncted from selling, disposing, charging or in any other way dealing with land parcel number Nandi / Chebilat / 703 pending the hearing and determination of the reference.**
- (5) Costs to the respondent.**

**Dated, signed and delivered at Kisumu this 13<sup>th</sup> of July 2012**

**H. K. CHEMITEI**  
**JUDGE**

**In the presence of:**

**Lore for Kowinoh Advocate for Applicant**

**Kimanga Advocate for Respondent.**

*HKC/aao*