



ROYAL MEDIA SERVICES v TELKOM KENYA LTD COMMUNICATIONS & 13 others
(Civil Application 15 of 2000) [2009] KEHC 864 (KLR) (6 November 2009) (Ruling)

ROYAL MEDIA SERVICES v TELKOM KENYA LTD COMMUNICATIONS & 13 others [2009] eKLR

Neutral citation: [2009] KEHC 864 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL APPLICATION 15 OF 2000

MK KOOME, J

NOVEMBER 6, 2009

BETWEEN

ROYAL MEDIA SERVICES APPLICANT

AND

TELKOM KENYA LTD COMMUNICATIONS 1ST DEFENDANT

COMMISSION OF KENYA 2ND DEFENDANT

AND

KENYA BROADCASTING COMMISSION RESPONDENT

AND

ATTORNEY GENERAL 1ST DEFENDANT

NICHOLAS ETYANG 2ND DEFENDANT

DANIEL MUSAU 3RD DEFENDANT

FRANCIS WANGUSI 4TH DEFENDANT

DANIEL WATURU 5TH DEFENDANT

J.N. KAMUNGE 6TH DEFENDANT

PHILIP N. KAMANGA 7TH DEFENDANT

GEORGE KHOJALA 8TH DEFENDANT

MUSA ETIKO 9TH DEFENDANT

HENRY WEST 10TH DEFENDANT

KAREN LANGATA DISTRICT ASSOCIATION 11TH DEFENDANT



RULING

1. The applicant Royal Media Services filed the chamber summon application under Rule 11 of The Advocates Remuneration Order and order XXI of the Civil Procedure Rules seeking for stay of execution of the order of the Taxing Officer made on 30th April 2009. That order required the applicant to pay the 1st defendant/ respondent Ksh.394,004,112/-. The stay order is required until the applicant can file a reference against the order of the Taxing Officer.
2. The application is predicated on the grounds that the order by the Taxing Officer made on 30th April 2009 is excessive, thus it presents an error on the part of the Taxing Officer. The applicant has a right to file a reference and for that reason they applied for reasons from the Deputy Registrar. Although the Deputy Registrar replied on 12th April 2009 giving reasons, the ruling was not supplied to the advocates until 21st July 2009. Mean while the defendants have commenced the execution proceedings and they have obtained warrants of attachment of the plaintiff's movable property.
3. This application is supported by the affidavit of Samuel Kamau Macharia sworn on 22nd July 2009. It emphasizes the same grounds in greater details. Counsel for the applicant urged the court to exercise its discretion in favor of the order of execution pending the hearing of the reference which has now been filed and fixed for hearing in November 2009. Counsel cited the following cases of Nakuru High Court Civil Appeal No. 82 of 2002; Lucy Wanjiru vs. Jane Muthoni and Nairobi Hccc No.2335 of 1997, Motichand Virpal Shah & Others vs. Investment & Mortgages Bank Ltd & 2 Others. In those two rulings, My Brother and Sister Judges, Kimaru J and Lesiit J in their respective rulings allowed an application for stay of execution of costs taxed pending the hearing and determination of the reference.
4. The circumstances in respect of HCCC 2335 of 1997 were different because Lesiit J found that the taxing master proceeded with the hearing and the taxation of the Bill of Costs in the absence of one party. The applicant also sought for the enlargement of time within which to file the reference. In Hccc No.82 of 2002 Kimaru J found that the applicant was admitted in hospital and was unable to give instruction to her advocate to file the reference. The court in its exercise of jurisdiction, allowed a stay of execution to enable the applicant ventilate a reference in the High Court.
5. This application was opposed by counsel for the 3rd respondent. Counsel submitted that there was inordinate delay on the part of the applicant to file a reference. The ruling was delivered on 30th April 2009, in the presence of both parties who were in court. They applied for reasons by a letter of the same date, which was received by the court on 5th May 2009. On 12th May 2009, the Deputy Registrar replied and stated that the reasons were contained in the ruling which would be supplied to the applicant. The ruling was ready by 25th June 2009 and the applicant has not explained why they did not obtain the ruling immediately it was ready, so as to file the reference.
6. Counsel referred to the case of Samuel Muchiri WA Njuguna vs. Zachary Waruiru Mukui Hccc No. 557 of 2001 where the court found a delay of two months to make an application for stay of execution was inordinate as there was no plausible explanation. Moreover, the applicant did not show evidence of substantial loss and the application for stay of the taxed costs was dismissed by Waweru J. In the case of Elkana Mukundi Gatimu & Another vs. John B. Muya & 3 Others Hccc No. 471 of 2004 (2006) eKLR Azangalala J while referring to the Court of Appeal decision in the case of Francis Kabaa vs. Nancy Wambui & Another C.A. No.298 of 1996 (UR) lamented that although the court is vested with inherent powers to order stay of execution especially where the costs taxed by the Taxing Master are astronomical otherwise referred to as manifestly excessive, in the face of the Court of Appeal decision,



cited above, the Judge found his hands tied and therefore dismissed the application for stay. Counsel for the respondent urged the court to be guided by those decisions and find it has no jurisdiction to entertain an application for stay seeking for an order of costs taxed.

7. I have considered those submissions; I must confess I was not furnished with the copy of the decision of the Court of Appeal in the case of Francis Kabaa vs. Nancy Wambui & another C.A. 298 of 1996 (UR). It is obvious from citation that it is unreported; therefore I have not been able to benefit from the full decision. I am vividly aware, parties are fond of citing only cases that are in support of their respective positions.. Cases vary depending on the circumstances and the facts. In this particular case before me, I find an exparte order of stay of stay of execution was made on 23rd July 2009 by My Senior Sister Khaminwa J. The applicant has also managed to file a reference on 31st July 2009, and indeed that reference is fixed for hearing on 9th November 2009, just a few days from this ruling.
8. The response by the respondent challenges the delay in filing the reference, that argument should appropriately be canvassed during the hearing of the reference. Taking all these matters into consideration and the broader principles in the administration of justice, I am inclined to exercise my discretion and grant a stay of execution of the taxed costs pending the hearing of the reference. As in all matters involving an order of stay, conditions are necessary, I will therefore order the applicant to deposit a sum of Kenya shillings four million (Ksh.4 million) being a negligible percentage of the taxed costs. The sum to be deposited in court within seven (7) days of this ruling.

RULING READ AND SIGNED ON 6TH NOVEMBER 2009 AT NAIROBI

M.K. KOOME

JUDGE

