



IN THE HIGH COURT OF KENYA AT N AIROBI

MISC. APPLICATION NO. 263 OF 2003

SHAH & PAREKH.....APPLICANT/RESPONDENT

versus

APOLLO INSURANCE CO. LTD.....RESPONDENT/APPLICANT

RULING

The Respondent/Applicant by a Chamber Summons dated the 26th January 2004 sought various orders including an order to enlarge the time within which the Applicant may file a Notice of Objection to the decision of the Taxing Master made on the 20th November 2003.

When such application came up for hearing on the 24th February 2004, Mr. Simiyu for Respondent/Applicant moved the Court to strike out the Grounds of Opposition dated the 23rd February 2003 and filed and served by the Applicant/Respondent on the 24th February 2004 (being the day of the hearing of the said application) on the grounds that the Applicant/Respondent has not complied with the provisions of Order 50 Rule 16 (1) of the Civil Procedure Rules. In reply, Mr. Tiego for the Applicant/Respondent while confirming that the said Grounds of Opposition were, indeed, filed and served on the day the said application was to be heard, contended that the proceedings herein are governed by the Advocates Act and not the Civil Procedure Act and that in any event, such grounds raise several points of law which the Court is obliged to hear.

I have considered the submissions of both counsels in conjunction with the decision of the Court of Appeal in the Central Bank of Kenya –vs- Uhuru Highway Development Limited and Three Others (Civil Appeal No. 75 of 1998 (unreported) in which it was held that the Court in its duty to see that justice is done is bound not to disregard any document on the record notwithstanding that it is irregularly filed and I am persuaded and bound to follow that decision.

Accordingly, I invoke the inherent power of the Court under Section 3A of the Civil Procedure Act and order that the Applicant/Respondent be and is hereby allowed to rely on the said Grounds of Opposition filed on the 24th February 2004 at the hearing of the said application dated the 26th January 2004. It is further ordered that the Respondent's/Applicant's costs for the 24th February 2004 be paid by the Applicant/Respondent.

Dated and delivered at Nairobi this 2nd day of March 2004.

P. Kihara Kariuki

Ag. Judge



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