



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 317 OF 2007

PRABHULAL TEJPAL HARIA1ST PLAINTIFF/APPLICANT

MRS. MANJU PRABHULAL HARIA.....2ND PLAINTIFF/APPLICANT

V E R S U S

MR. PRAVINSHANDRA MEGHJI DODHIA.....1ST DEFENDANT/RESPONDENT

MRS. REKHA PRAVINCHANDRA DODHIA.....2ND DEFENDANT/RESPONDENT

BHAVISHA PROPERTIES LIMITED.....3RD DEFENDANT/RESPONDENT

RULING

(1) Before this Court is the Chamber Summons dated **16th September 2019** by which the Plaintiff/Applicant seeks the following orders:-

1. THAT this Honourable Court be pleased to grant leave to the Applicant to file a reference out of time against the taxation made by the Deputy Registrar of this Honourable Court on 11th June 2009.

2. THAT the costs of and incidental to this application abide the result of the said reference.

(2) The application which was premised upon **Order 50 Rule 5** of the **Civil Procedure Rules, Rule 11(1)(2) and (4)** of the **Advocates (Regulations) Remuneration Order and Sections 1A, 1B and 3A** of the **Civil Procedure Act**, was supported by the Affidavit dated **16th September 2019** sworn by **GIBSON KAMAU KURIA** and Advocate of the High Court of Kenya.

(3) The Respondent opposed the application and in doing so relied on the Replying Affidavit dated **5th December, 2019** sworn by **DANIEL KIRAGU** an Advocate of the High Court of Kenya. The application was canvassed by way of written submissions. The Plaintiff/Applicant filed written submissions dated **9th March 2020** whilst the Respondents did not file any submissions at all.

ANALYSIS AND DETERMINATION

(4) This application arises from a Ruling delivered on **11th June 2019** by **Hon. Elizabeth Tanui**, Deputy Registrar after taxing the Bill of Costs dated **2nd August 2017**. The Applicant now seeks leave to file a Reference against that Ruling out of time.

(5) **Rule 11(1) of the Advocates Remuneration (Amendment) Order** provides as follows:-

“Should any party object to the decision of the Taxing Officer, he may within fourteen days after the decision give notice in writing to the Taxing Officer of the items of Taxation to which he objects.”

(6) The Applicant whilst conceding that the fourteen (14) days provided within which to file an objection has expired submits that they were unable to act as no copy of the Ruling was availed to them until **15th August 2019**. That it was not until **17th July 2019** that the Hon. Deputy Registrar through a letter dated **15th July 2019** gave the reasons for the taxation. The Applicant submits that given that it was not until **15th August 2019** that a copy of the Ruling was received by her Advocates, then in line with **Order 11(2) of the Advocates Act**, the Reference ought to have been filed within fourteen (14) days of that date.

(7) However I am not persuaded by the submissions of Counsel for the following reasons. It is not in dispute that the Ruling on Taxation was delivered on **11th June 2019**. Counsel for the applicant filed a Notice of Objection on **25th June 2019** and sought to be furnished with reasons for the decision. By a letter dated **15th July 2019**, the Hon. Deputy Registrar indicated that the reasons were contained in the Ruling itself. They thus ought to have filed the Reference within **fourteen (14) days** of the date when the reasons were furnished ie or or about **30th August 2019**.

(8) In the case of **EVANS GATURU ADVOCATE –VS- KENYA COMMERCIAL BANK LIMITED [2012]eKLR**, it was held as follows:-

“In most cases, the court is aware that, taxing officers, in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons, thereafter. In such circumstances it would be foolhardy to expect the taxing officer to redraft another “ruling” containing the reasons. However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference. Otherwise mere adherence to the procedure may lead to absurd results if the advocate was to continue waiting for reasons, as it happened in the case of Kerandi Manduku & Company vs. Gathecha Holdings Limited Nairobi (Milimani) HCMA No. 202 of 2005, where the taxing officer had left the judiciary. Where reasons are contained in the decision, I share the view that to file the reference more than 14 days after the delivery of the same would render the reference incompetent.” [own emphasis]

(9) Similarly in **AHMED NASIR ABDIKADIR & CO. ADVOCATES –VS- NATIONAL BANK OF KENYA LTD [2006]IE.A** it was held:-

“Although Rule 11 (2) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Taxing Officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons. Where the reasons for the taxation on the disputed items in the Bill are already contained in the considered Ruling, there is no need to seek for further reasons simply because the unfortunate wording of subrule (2) of Rule II of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered Ruling.” [own emphasis]

(10) Therefore the Applicants had fourteen (14) days from **17th July 2019** to file a reference. They failed to do so. This application was not filed until **September 2019** almost sixty (60) days **after** the Deputy Registrar had given the reasons for her decision. No explanation is given for this delay. In my view the Applicant is guilty of laches. I find no merit in this application. The same is dismissed in its entirety with costs to the Respondent.

Dated in Nairobi this 22ND day of JANUARY, 2021.

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MAUREEN A. ODERO

JUDGE