



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**CIVIL CASE NO. 2 OF 2020**

**CO-OPERATIVE BANK OF KENYA LTD.....APPELLANT/RESPONDENT**

**-VERSUS-**

**DAVID WAMBUA KISAU.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**INVESCO INSURANCE CO. LTD.....2<sup>ND</sup> RESPONDENT/RESPONDENT**

**RULING**

1. Before me is a Chamber Summons dated 3<sup>rd</sup> August 2020 filed by David Wambua Kisau under section 3A, and 63(e) of the Civil Procedure Act (Cap 21), as well as Rule 11 of the Advocates Remuneration Order, through counsel M/s Kiyondi Nyachae advocates, seeking the following orders –

1) **That**, the court be pleased to set aside the decision/ruling made by the honourable Deputy Registrar on taxation of the Bill of Costs dated 25<sup>th</sup> February 2020 together with any and/or all decisions of the Taxing Officer in respect of the reasoning and determination pertaining to the taxation of the Bill of Costs.

2) **That**, in the alternative, the honourable court be pleased to exercise its inherent jurisdiction to accordingly alter or re-tax/ re-assess the Bill of Costs dated 25<sup>th</sup> February 2020, together with any or all decisions of the Taxing Officer in respect of the reasoning and determination pertaining to taxation of the Bill of Costs.

3) **That**, the costs of this application be provided for.

2. The application has grounds on the face of the Chamber Summons which are mainly that the Taxing Officer had no legal basis for disallowing some items, and that the said Bill of Costs ought to be taxed at Kshs.217,943/=.

3. The application was filed with a supporting affidavit sworn by Wislay Orange Kiyondi advocate for the applicant on 3<sup>rd</sup> August 2020 which annexed a copy of the taxation ruling delivered on 22/7/2020 and the Certificate of Costs dated 3<sup>rd</sup> August 2020.

4. The application is opposed through a replying affidavit sworn by Philip Musya advocate for Co-operative Bank of Kenya Ltd on 17<sup>th</sup> September 2020, in which it was deponed that the taxation of the Bill of Costs was properly done and that the application should be dismissed as the amount taxed had already been settled through payment.

5. The application proceeded by way of filing written submissions. The applicant's counsel Kiyondi Nyachae advocates filed submissions on 28/2/2021, while the appellant's/respondent's counsel M/s B.M Mungata & company filed their submissions on 26<sup>th</sup> February 2021. Both counsel relied on a number of legal authorities.

6. Having considered the application, documents filed and the submissions of the parties' counsel, in my view, this application has to be dismissed on a technicality, for not complying with the laid down legal requirements under Rule 11(1)&(2) of the Advocates Remuneration Order, which provides as follows –

***11(1) 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.***

***(2) The Taxing Officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons which shall be served on all parties concerned, setting out the grounds of objection”***

7. In my view, the giving requirement of notice to the Taxing Officer to provide the reasons for the decision under Rule 11(1) above, is a necessary pre-requisite and has to be complied with prior to the filing of the Chamber Summons to the Judge challenging the taxation. The application herein is defective as the applicant did not give the required notice and the Taxing Officer neither specified the reasons for the taxation in the ruling, nor has he given such reasons to enable this court know what is in contest to enable it make a considered decision.

8. I thus find the application herein to be premature and incompetent. I strike out the application, with costs to the appellant/respondent.

**DATED, DELIVERED AND SIGNED THIS 26TH DAY OF APRIL 2021, IN OPEN COURT AT MAKUENI.**

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**GEORGE DULU**

**JUDGE**