



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & JUDICIAL REVIEW DIVISION

MISC. APPLICATION NO. 24 OF 2018

KIAMA WANGAI & COMPANY ADVOCATES.....APPLICANT

VERSUS

TABITHA NJERI KIHARA.....RESPONDENT

RULING

1. By a notice of motion application dated 15th November, 2018 supported by the affidavit of Prof. Kiama Wangai of even date, the Applicant, Kiama Wangai & Company Advocates, seeks judgment against the Respondent/Client, Tabitha Njeri Kihara, for the sum of Kenya shillings one million, two hundred and thirty-six thousand, four hundred and twenty-nine and thirty cents (Kshs. 1,236,429.30) being what is claimed to be certified costs due to the firm of advocates. The costs are pursuant to a bill of costs dated 27th February, 2017 which culminated in the ruling delivered on 31st July, 2017 by the Deputy Registrar in Nairobi C&HR Division Petition No. 335 of 2011, Tabitha Njeri Kihara v The Medical Practitioners and Dentist Board & another. The applicant further seeks that the Respondent pay interest on the certified costs at the rate of 14% per annum from 31st July, 2017 until payment in full.
2. The Respondent opposed the application through a replying affidavit sworn on 29th November, 2018. She avers that she was aggrieved by the taxing officer's ruling since the amount taxed was exorbitant and unconscionable as the matter was settled out of court. Further, that she filed a notice of objection to taxation dated 18th April, 2018 and a reference which is yet to be determined. It is therefore her contention that the present application is preemptive, an abuse of the court process and ought to be dismissed with costs.
3. I have carefully perused the pleadings, the supporting documents and the arguments before the court. The procedure to be used by a party aggrieved with a taxation is provided for by Rule 11 of the Advocates (Remuneration) Order and is specific. A party aggrieved must write to the taxing master within 14 days of the taxation, a notice of objection specifying the items in the bill of taxation in respect of which he is aggrieved of and requesting the taxing master to give reasons for his decisions on the items objected to.
4. **The Respondent claims that being aggrieved by the ruling of the taxing master of 31st July, 2017, she filed a notice of objection to taxation on 18th April, 2018. It is noted that this step was taken several months after the delivery of the taxation decision and was therefore outside the period of 14 days provided by the Advocates (Remuneration) Order. Further, the said notice does not specify the items of the bill of taxation she was objecting to.** Nevertheless, the taxing master had on the date of the delivery of her decision given reasons for her taxation.
5. The notice by the Respondent was therefore, in my view, not the notice of objection envisaged under Rule 11(1) of the Advocates (Remuneration) Order. The Respondent also refers to a reference in her replying affidavit which reference the Applicant is not aware of and the same is also not attached to the Respondent's replying affidavit.
6. Rule 11 of the Advocates (Remuneration) Order, 2009 is clear on the procedure with respect to objection to decisions on taxation. Paragraph 11 of the Advocates (Remuneration) Order provides as follows:

“11. Objection to decision on taxation and appeal to Court of Appeal.

- (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 the parties concerned, setting out the grounds of his objection.**

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2), may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(5) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

7. It is therefore evident from a reading of the cited provisions that the Respondent did not adhere to the laid down procedure by failing to serve the proper notice of objection upon the taxing master in time. Secondly, she failed to file a proper reference to a judge in chambers based on the reasons provided by the taxing master. In **Kenya Airport Authority v Queens Insurance Agency, NRB HCCC No. 1430 of 2000** (unreported) which was cited with approval in **Ufundi Co-operative Savings and Credit Society v Njeri Onyango & Company Advocates [2015] eKLR** the Court found that the Applicant:

- i. Had not given notice in writing to the taxing officer of the items in the bill of taxation which he objected to.
- ii. Had not sought and/or obtained record by the taxing officer of the reasons of the latter's decision on the items complained of.
- iii. Had not waited for nor received the reasons for the taxing officer's ruling before going ahead to file its application.
- iv. Had accordingly not exhausted the mandatory provisions of the Advocates Remuneration Order Rule

The Court went ahead to find that the application before it was incompetent and only good enough for dismissal.

8. The decision of Onyancha, J in **Sound Entertainment Limited v Antony Burungu and Co. Advocates [2014] eKLR**, correctly pointed out the procedure for the challenge of a taxation of costs by way of a reference under paragraph 11 of the Advocates (Remuneration) Order. The Court stated that:

“The relevant question then is which decision is the Applicant intending to appeal against especially where the Applicant has not identified the particular items which he wants to object to the Taxing Officer. It is clear to the court, therefore, that not only is the application brought under totally inapplicable provisions but the substance of the application is so vague to a point it makes little sense. For that reason alone this court would strike the application out as misconceived and incompetent.”

9. Being satisfied that the certificate of costs has not been set aside, reviewed and or varied, I am inclined to find merit in the present application. The upshot is that the application dated 15th November, 2018 is allowed with costs to the Applicant.

10. It is, however, observed that the sum of Kshs. 1,236,429.30 claimed by the Applicant is not what was awarded by the taxing master. Judgement will therefore be entered in favour of the Applicant, Kiama Wangai & Co. Advocates, in the sum of KShs.289,231.50 being the costs allowed by the taxing master as per the ruling of 31st July, 2017 and confirmed by the certificate of costs issued on 28th August, 2017. Interest on the amount shall be at court rates from the date of taxation.

Dated, Signed and Delivered virtually at Nairobi this 26th day of November, 2020.

W. Korir,

Judge of the High Court