



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 150 OF 2016

ASHIOYA & COMPANY ADVOCATES.....APPLICANT

VERSUS

KIREFU RASHID.....RESPONDENT

RULING

The applicant filed an application by way of chamber summons under schedule 11(1), 3(a) (b), (c), (d), (e), 4 and 5 of the Advocates Remuneration Order Cap 16 laws of Kenya. He is seeking the following orders:

- a) That leave be granted to the applicant to file a reference challenging the taxing officer's ruling of the applicant's bill dated 14th December 2016 and delivered on 25th May 2017.
- b) That upon such leave being granted, this honourable court be pleased to set aside and or vary the taxing officer's ruling on taxation of the applicant's bill dated 14th December 2016 and the bill be taxed afresh.
- c) That the costs of the suit be provided for.

2. The application was premised on the following grounds:

- a) That the ruling of the taxation was made in the absence of the applicant herein.
- b) That the decision on taxation was arrived at on the basis of wrong principles.
- c) That the learned taxing officer overlooked the provisions of schedule 10B of the Advocates Remuneration Order and arrived at a wrong decision.
- d) That the application raises triable issues.

3. The respondent opposed the application on the following grounds:

- a) That the bill was assessed in the presence of both parties.
- b) That the applicant was aware of the date for the ruling.
- c) That schedule 10B of the Advocates Remuneration (amendment) Order 2014 was not applicable.

4. The contention by the applicant that the ruling ought to be vacated for the reason that it was delivered in his absence has no merit. Once a court has notified parties the date for delivery of a decision, the court has no obligation to defer the decision unless where any of the parties has communicated to the court inability to attend court. The reason must be compelling. Even if the court disregards such a communication, this cannot be a basis for overturning the decision arrived at. In the instant case the applicant does not explain his absence nor does he say whether he had communicated his absence in advance or not. He does not demonstrate any prejudice that he suffered. This ground is dismissed.

5. Under schedule 7 of Advocates Remuneration (amendment) Order 2014, the fee provided for a claim of more than Kshs. 500,000/= up to Kshs. 1,000,000/= on higher scale is Kshs 90,000/= and not Kshs.120,000/=.

6. I agree with the taxing officer on disallowing item 5 for instructions are given once. I also agree with the taxing officer on item 31. The total fees and disbursements ought to have been Kshs.167,647 increased by 50% (Kshs. 83,823.5) the sum total is Kshs. 251,470.5.

7. The bill ought to have been taxed at Kshs.251,470.5. I accordingly set aside the figure arrived at by the taxing master and substitute it with a figure of Kshs.251,470.5 with no orders as to costs of this application.

DELIVERED and SIGNED at BUSIA this 25th day of February, 2019

KIARIE WAWERU KIARIE

JUDGE