



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM; CHERERE-J)

MISC. CIVIL CAUSE NO. 02 OF 2018

BETWEEN

WESLEY MARANGA ROBINSON GICHABA.....ADVOCATE/1ST RESPONDENT

AND

RAJNIKANT KARSANDAS SOMAIA...INSTRUCTING CLIENT/2ND RESPONDENT

KHUSHBIR HARJEET SINGH CHADHA.....INTERESTED PARTY/APPLICANT

RULING

1. By a chamber summons dated 22nd November, 2018 brought under the provisions of Articles 50(1) and 159(2) of the Constitution, Sections 1A, 1B, 3A, 63(e) of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules and Paragraph 11 (2) of the Advocates Remuneration Order, 2009, the applicant seeks the following orders:

1) That the Honourable Court be pleased to deem this application for reference against the Taxing Master's Ruling dated and delivered on 10th August, 2018 as duly filed within time or alternatively to extend/enlarge time to cover the delay in filing the said reference

2) That the Honourable Court be pleased to vacate and set aside in its entirety the Ruling of the taxing master dated and delivered on 15th August, 2018 taxing the Advocate-Client Bill of Costs dated 15th January, 2018 at Kshs. 3,889,249.50 and refer the matter for fresh taxation

3) That costs of this application be provided for

2. The motion is premised on the grounds among others that the taxation is grossly excessive given that party and party costs were taxed at Kshs. 489,699.20; the 1st Respondent has retained more than half the decretal sum as its costs which is prejudicial to the Applicant and further that the delay in filing a reference was occasioned by the fact that the Applicant was not notified of the delivery of the Ruling dated and delivered on 10th August, 2018 and only became aware of it on 13th November, 2018 after receiving communication from the Deputy Registrar of this Court.

3. The summons is supported by an affidavit sworn by the Applicant on 22nd November, 2018 in which she reiterates the grounds on the face of the application and in addition deposes that the grounds on which the Taxing Master allowed instructions fees at Kshs. 1,500,000/- are unclear, unreasonable and legally untenable.

4. The application is opposed on the basis of grounds of opposition dated 03rd December, 2018 and filed on 06th December, 2018. The 1st Respondent argues that this court has no jurisdiction to hear this application and that the application has no merit, is bad in law, is misconceived and a total abuse of the court process and urges the court to dismiss it.

Analysis and Determination

5. I have considered the chamber summons in the light of the supporting affidavit, the grounds of opposition, the voluminous submissions filed on behalf of the Applicant and the 1st Respondent and numerous authorities cited by the parties.

6. Concerning the jurisdiction of the court to entertain this application, I have considered the provisions of Paragraph 11 of the Advocates

Remuneration Order which provides THAT:

(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.

7. Paragraph 11 (1) uses the word **MAY**. Though it is not couched in mandatory terms, the rule contemplates a notice in writing requesting for reasons of the Taxing Officer's decision on taxation of specified items of the Bill of Costs, and upon receipt thereof an application commonly referred as a reference to a judge, by way of Chambers Summons setting out the grounds of objection to the taxation. Consequently, the 1st Respondent's contention that this court has no jurisdiction to entertain this application on account of Applicant's failure to give notice in writing to the taxing officer of the items of taxation to which he objects is not tenable and it is rejected.

8. The Applicant's contention that notice of delivery of the Taxing Master's Ruling dated and delivered on 10th August, 2018 was not given and that it became aware of the ruling on 13th November, 2018 after receiving communication from the Deputy Registrar of this Court has not been controverted.

9. The present application was filed timeously on 22nd November, 2018 which is 8 days after the Applicant became aware of the Taxing Master's Ruling dated and delivered on 10th August, 2018.

10. To my mind, the Applicant has given sufficient reason for its delay to file the reference. In the interests of justice and to enable the filing of an appropriate application for consideration by the Court, the Court will grant the Applicant a limited period of time to comply with the provisions of Paragraph 11 of the Advocates' Remuneration Order, and in the meantime order a stay of execution of the Taxing Master's Ruling dated and delivered on 10th August, 2018.

11. Accordingly, for reasons set out above, the Court makes the following orders:

1) The applicant has leave of court to file a reference from the against the Taxing Master's decision contained in the Ruling dated and delivered on 10th August, 2018 out of time.

2) The applicant shall within fourteen (14) days from the date hereof give the requisite notice in writing in accordance with Paragraph 11 (1) of the Advocates' Remuneration Order, 2009, and subsequently comply with sub-paragraph (2) of paragraph 11 thereof with regard to the filing of a reference by Chamber Summons setting out its grounds of objection to the taxation of costs.

3) There shall be a stay of execution of the Taxing Master's decision contained in the Ruling dated and delivered on 10th August, 2018.

4) Costs of this application shall abide the outcome of the reference

DELIVERED AND SIGNED IN KISUMU ON THIS 27th DAY OF June 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For the Applicant -Mr. Eboso

For the 1st Respondent - Mr. Omollo

For the 2nd Respondent - N/A