



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 14 OF 2016

AKIDE & CO. ADVOCATES.....ADVOCATE/APPLICANT

-VERSUS-

KENINDIA ASSURANCE & CO. LIMITED.....CLIENT/RESPONDENT

RULING

1. The advocate/applicant in this instance has filed the Chamber Summons dated 19th September, 2016. The Summons is supported by the grounds set out on its face and the facts deponed in the affidavit sworn by *Patriciah Wangari Gikunju*. The applicant is seeking for the orders hereunder:

(i) THAT this Honourable Court be pleased to set aside in its entirety the order/ruling of the taxing master made on 7th September, 2016.

(ii) THAT this Honourable Court be pleased to review the order of the taxing master made on 7th September, 2016 disallowing the entire Bill of Costs.

(iii) THAT this Honourable Court be pleased to reinstate the Advocate-Client Bill of Costs dated 26th May, 2015.

(iv) THAT costs of the application be provided for.

2. In opposition to the Summons, the replying affidavit sworn by *Don Otury* on 13th March, 2017 was filed on behalf of the client/respondent.

3. Pursuant to the directions issued by the court on 29th March, 2017 the application was to be disposed of through written submissions. Whereas the applicant filed its submissions, the respondent opted to rely on the averments made in its replying affidavit.

4. I have considered the grounds set out on the body of the Summons; the facts deponed in the affidavits filed in support and in opposition plus the submissions of the applicant.

5. A brief background of the matter is that the applicant filed the Advocate-Client Bill of Costs dated 26th May, 2015 on 14th January, 2016 for the sum of Kshs.71,453/=. The same was heard by the taxing officer, Honourable F. Rashid, who ultimately ruled that the Bill of Costs was time-barred and proceeded to strike it out on.

6. It is noted that the competency of the same was brought to question by the respondent on the basis that the applicant has not followed the proper procedure to either file an application for review or an appeal against the taxing master's decision, thereby rendering the application improper and irregular in law.

7. The respondent further contends that the applicant, having failed to annex a copy of the ruling, cannot seek a review of the same in its absence.

8. In the present instance, whereas the matter was placed before the taxing master, it did not proceed for taxation but was instead struck out. In that case, I am of the view that the subject of review and/or failure of the applicant to annex a copy of the ruling is neither here nor there and amounts to a mere technicality. In the interest of substantive justice, I will consider the merits of the application.

9. The real issue for determination concerns whether the taxing officer had jurisdiction to strike out the Bill of Costs on the basis that it was time barred.

10. **Rule 13A** of the **Advocates Remuneration Order** which is relevant provision in this instance expresses thus:

“For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, administer oaths, to direct the production of books, papers and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.”

11. From the foregoing, it is evident that a taxing officer’s jurisdiction does not extend to considering the issue of limitation of time in respect to a Bill of Costs. In that case, the taxing officer in the present instance had no jurisdiction to determine the question of limitation of time to file an action.

12. Consequently, the application is allowed on its merits giving rise to the following orders:

- a) *The order striking out the Bill of Costs is hereby set aside.*
- b) *The Bill of Costs is reinstated to be placed before a Judge to determine that is.*
- c) *Costs of the application to abide the outcome of the reference.*

Dated, signed and delivered at Nairobi this 20th day of September, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Advocate/Applicant

..... for the Client/Respondent