



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS CIVIL APPLICATION NUMBER 15 OF 2016**

**AKIDE & CO. ADVOCATES. .... APPLICANT**

**VERSUS**

**KENINDIA ASSURANCE CO. LIMITED..... RESPONDENT**

**R U L I N G**

1. Akide & Co. Advocates, the Advocate/Applicant took out the summons dated 19<sup>th</sup> September, 2016 in which it sought for the following orders:-

*a. That this honourable court be pleased to set aside in its entirety the Order/Ruling of the Taxing master on 7<sup>th</sup> September, 2016 and delivered on the same day.*

*b. That this honourable court be pleased to review the order of the Taxing maser made on 7th September, 2016 disallowing the entire Bill of Costs herein.*

*c. That this Honourable Court be pleased to reinstate the Applicant's Bill of Costs dated 7th March, 2015.*

*d. That, Costs of this application be provided for.*

2. The summons is supported by the Affidavit of Patricia Wangari Gikunju. When served with the aforesaid summons, Kenindia Assurance Co. Ltd, the Client/respondent, filed the replying affidavit of Dan Otury to oppose the application.

3. When the summons came up for inter partes hearing, learned counsels recorded a consent order to have it determined by written submissions. At the time of writing this ruling, the applicant was the only party who had filed its submissions.

4. I have considered the grounds stated on the face of the summons and the facts depend in the Affidavits filed in support and against the summons. I have also taken into account the Applicant's written submissions. The main issue which was posed to this court to determine is whether a Taxing Officer has jurisdiction to hear and determine an objection based on the Limitation of Actions Act.

5. Before delving deeper into the substance of the summons, it is appropriate at this stage to set out the background of this matter. It is apparent that the Advocate/applicant received instructions from the client/respondent to appear and defend the Client's insured in **Nairobi P.M.C.C. No. 11228 of 1998 Vitalis Okwiri Opondo Vs the United Textiles (K) Ltd.** It would appear the Applicant proceeded to act for the Insured as per those instructions. The advocate thereafter filed his Bill of Costs dated 7<sup>th</sup> March, 2015.

6. When the aforesaid Bill of Costs came up for hearing, the Respondent raised a Preliminary Point of Law arguing that the Bill of Costs was time-barred. The learned Taxing Officer upheld the preliminary Objection and proceeded to strike out the applicant's Bill of Costs. The Applicant was aggrieved by the decision hence this reference.

7. It is the submission of the Advocate/applicant that the Taxing Officer has no jurisdiction to hear and determine the question as whether a Bill of Costs is statute-barred.

8. In response to the Applicant's submissions, the Respondent did not respond to the merits or otherwise of the issue touching on the question as to whether the Taxing Officer has jurisdiction to entertain the matter but it instead concentrated on the competency of the reference.

9. It is the Respondent's submission that the reference is filed as an application for review. It was pointed out that the Applicant has failed to annex the ruling sought to be reviewed. The Respondent further submitted that the summons also appears as an appeal in which case, the same is incompetent, in that the procedure for commencing an appeal was not followed. The Advocate/Applicant did not however address

this court over the issues raised by the client/Respondent.

10. I have carefully considered the arguments put forward by the client/Respondent. The main argument is to the effect that on the face of it, the summons is an application for review. This court was urged to find that the failure to annex the ruling sought to be reviewed is fatal hence the summons ought to be struck out.

In my view, though the summons seeks for the review of the ruling of the Taxing Officer, it is not correct to state that the application is an application for review as envisaged under Order 45 of the Civil Procedure Rules. It is apparent that the summons expressly states that it is premised under the provisions of paragraph 11(2) and 79 of the Advocates Remuneration Order. In my humble view, the same is simply a reference to challenge the decision of a Taxing Officer and cannot be regarded as an application for review nor an appeal for that matter.

11. Having disposed of the preliminary issue, I now turn my attention to the substance of the reference. I have already stated that the Client/Respondent did not deem it fit to address this court over the issue touching on the jurisdiction of the Taxing Officer to entertain the question of Limitation of Actions. It is not disputed that Hon. F. Rashid, the Taxing Officer struck out the Applicant's entire Bill of Costs under Section 4(1) (a) of the Limitations of Actions Act.

12. The Applicant is arguing that the Taxing did not have power to do so. The jurisdiction of a Taxing Officer is set out under Rule 13A of the Advocates Remuneration Order. The Taxing Officer was not given the power to determine whether or not a Bill of Cost is statute-barred. The jurisdiction to determine such a question is the preserve of a judge. With respect, I agree with the Advocate/Applicant that the learned Taxing Officer exceeded her mandated when she struck out the Applicant's Bill of Costs.

13. In the end, I find merit in the summons. Consequently, the summons dated 19<sup>th</sup> September, 2016 is allowed in terms of prayers 1, 2 and 3. Costs of the Summons to abide the outcome of the reinstated Bill of Costs.

**Dated, signed and delivered on 16<sup>th</sup> day of August, 2018.**

.....

**J K SERGON**

**JUDGE**

*In the presence of*

..... *for the Applicant*

..... *for the Respondent*