



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISC. CIVIL APPLICATION NO.611 OF 2014

ELIAB MUTURI MWANGI.....APPLICANT

VERSUS

LSG LUFTHANSA SERVICE EUROPA/AFRIKA

LSG SKY CHEFS KENYA LTD.....RESPONDENTS

RULING

1. There is pending in this matter a bill of costs which has not yet been taxed. It is Advocate/Client Bill of costs filed by the advocate **Eliab Muturi Mwangi** practicing under the name **Muturi Mwangi & Associates Advocates**. The Bill of cost was filed in court on **19th December 2014**. It has indeed taken inordinately long to be taxed. Part of the reason is that the taxing master was called upon to Rule on preliminary objection raised by the client. The Ruling was delivered on **18th July 2016**.
2. The taxing master gave leave to the client the file a replying affidavit and to file written submissions.
3. The client filed an affidavit of **Dr. Stephen Zilles** on **9th December 2016**. The advocate responded by his own affidavit, submissions and authorities on **26th January 2017**.
4. Taxation was then fixed on **6th February 2017**. On that date it transpired that the client had filed on **3rd February 2017** an affidavit of **Stephen Zilles**.
5. On **6th February 2017**, after the taxing master heard submissions from the client and the advocate, on whether to admit the second affidavit of **Dr. Stephen Zilles**, the taxing master admitted that affidavit and granted the advocate 14 days to respond.
6. The advocates has filed a chamber summons dated **27th February 2017** seeking this court do vacate, review, vary and/or set aside the taxing master's Ruling of **13th February 2017** by which the taxing master admitted into the record the further affidavit of **Dr. Stephen Zilles**, of **3rd February 2017**.
7. The affidavit in support of that application is sworn by the advocate.
8. The ground for seeking vacation, review or variation of the taxing master's ruling is that **Dr. Zilles'** affidavit relies on matter on commercial transaction work which he obtained from advocate **Paras Shah**. The advocates in this regard deponed:

“THAT in essence, therefore, Dr. Zilles’ deposition on the issue of industry practice is really the evidence of Mr. Paras Shah. In truth, this deposition by Dr. Zilles is in fact a mask which he holds before this Honorable Court’s face in an attempt to avoid recognition by the eye of equity by introducing the inadmissible evidence of Mr. Paras Shah ‘through back door’.

THAT further to the foregoing, paragraph 17 of Dr. Zilles’ further affidavit is based on the advice of Mr. Cecil Kuyo, “an advocate in the firm of the Coulson Harney”. Based on Mr. Kuyo’s advice, Dr. Zilles deposes that the Advocates Remuneration Order “does not incorporate the [supposed] international standards of charging fees.”

9. The application was opposed by the client on the basis that the application was premature and offends paragraph 11 of the Advocates (Remuneration) Order because the Bill of costs is yet to be taxed.

DETERMINATION

10. Having considered the application and the supporting affidavit and having considered **Dr. Zilles** further affidavit I find that the application has no merit. It has no merit because the issues deponed to by **Dr. Zilles** are pertinent during taxation and if indeed the advocate is aggrieved with that taxation he will have a right to file a reference before the High court.

11. The advocate is also not entirely right to submit that the matters **Dr. Zilles** deponed to, that they were not from his own knowledge. Looking at paragraph 6 of that further affidavit the deponent state:

“I am aware that the prevailing international practice for charging legal fees in respect of transactional work is by time-based billing.”

12. From the above it will be seen that the deponent, even though in part he relied on advise, that he also had personal knowledge.

13. For the above reason the chamber summons dated **27th February 2017** is dismissed with costs to the client.

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Applicant

..... for the Respondents

MARY KASANGO

JUDGE