



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS CIVIL APPLICATION NO. 58 OF 2016

IN THE MATTER OF ADVOCATES ACT CAP 16 LAW OF KENYA

F.A BADIA AND CO. ADVOCATES.....APPLICANT/ADVOCATE

-VERSUS-

GEOFRREY DUNGU JOSEPHAT T/A VENTURE AUCTIONEERS...1ST DEFENDANT/ RESPONDENT

JULIA OMBATI ADVOCATE.....2ND RESPONDENT

MARY WANDERI T/A ALL TIMES ENTERPRISES.....3RD RESPONDENT

RULING

1. The Applicant's Bill of Costs dated 16th February 2016 was taxed on the 26th October 2016 in the sum of Kshs.130,335/=. The Applicant F.A Badia & Company Advocates being dissatisfied with the outcome filed the application before me seeking an order to set aside the taxing master's ruling dated 26th October 2016, and an order for re-assessment of the costs due to the advocates, on grounds that the taxing officer failed to properly exercise her discretion and taxed the bill contrary to settled principles of law, and therefore the outcome had no basis in law.

2. Despite being served with the application and hearing notice as evidenced by filed affidavits of service, non of the respondents responded to the application.

3. I have considered the application dated 11th July 2017. No legal provisions are cited as being the basis of the application, despite there being very specific provisions for objecting to or challenging a taxing master's decision under the Advocates Act and the Advocates (Remuneration) Order.

4. Paragraph 11 of the Advocates Remuneration Order sets down the procedure of opposing a taxing officer's decision. It is by way of a reference to the judge, and upon obtaining reasons for the taxation from the taxing officer upon notice.

Paragraph 11(1) states:

“Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.”

5. I have not been provided with the notice requesting for the reasons, nor an objection thereto, nor have I been told that the taxing officer has failed to provide the reasons.

Even if such reasons were not provided, the objector is not barred from filing a competent reference – **Kipkorir, Titoo & Kiara Advocates – vs- Deposit Protection Fund board (2005) e KLR**. The notice of objection has also not been furnished to the court.

6. The application was filed outside the 14 days period. It was filed on the 12th July 2017 **well over nine months** after the taxation. No extension of time under Order 51 of the Civil Procedure Rules was obtained, and no reasons are given.

7. So is there any competent reference to this court under **Rule 11(2) of the Advocates(Remuneration)Order?**

The answer is No.

If that be so, then this application is not competently before me. I say so because it is only upon the filing of a reference to the Judge that a judge is clothed with jurisdiction to hear an objection from a taxing officer's decision – **Musyoka and Wambua Advocates -vs- Rustam Hira Advocate (2006) e KLR**. See also **Machira & Co. Advocates -vs- Arthur Magugu & Another Nbi HCCC Misc App. No. 358 of 2011**.

8. The orders sought by the applicant Advocates can therefore not be available there being no reference or objection to the taxing officer's decision dated the 26th October 2016.

9. The application dated the 11th July 2017 is thus dismissed as being devoid of merit.

10. The Respondent is awarded costs of the application.

Dated, signed and delivered this 29th Day of November 2018.

J.N. MULWA

JUDGE