



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO. 33 OF 2018

(CONSOLIDATED WITH MISC. CIVIL APPLICATION

NOS. 34 TO 48 of 2018

BETWEEN

PETER M. KARANJA & COMPANY ADVOCATE.....ADVOCATE/RESPONDENT

AND

SUKWINDER SINGH CHATTHE.....APPLICANT/CLIENT

AND

RAGHBIR SINGH CHATTHE.....APPLICANT/CLIENT

CHANNAN SINGH CHATTHE.....APPLICANT/CLIENT

SATWANT SINGH CHATTHE.....APPLICANT/CLIENT

RULING

1. By a notice of motion dated 17th October, 2018 brought under the provisions of Rule 11(4) of the Advocates (Remuneration) Order and Article 159 of the Constitution, the applicant sought 7 prayers. Prayers 1 to 3 which include one of consolidating **MISC. CIVIL APPLICATION NO. 33 of 2018** with **MISC. CIVIL APPLICATION NO. 34 to 48 of 2018** have been spent.

The remaining prayers seek orders that:-

- 1. That this Honourable Court be pleased to set aside the Taxing Master decisions on the taxed Advocate-Client bills of costs and the certificate of costs issued pursuant thereto***
- 2. That leave be granted to the Clients/Applicants to defend the filed Advocate-Client bills of costs and the bills be taxed afresh***
- 3. That in the alternative, the Clients/Applicants be granted extension of time to enable them file a reference as against the said taxations***
- 4. That costs of this application be provided for***

2. The motion is premised on the grounds among others that the Advocate/Respondent has filed 16 Bills of Costs arising from **HCCC NO. 164 OF 2003** whose subject matter was Kshs. 22,000,000/- which were taxed for an accumulative sum of Kshs. 288,943,896/- without the involvement of the Applicants/Clients on account of non-service and that the Applicants/Clients have been condemned unheard.

3. The motion is supported by an affidavit sworn by **SUKWINDER SINGH CHATTHE** on 17th October, 2018 in which he reiterates the grounds on the face of the application and maintains the bills were not served on any of the Applicants/Clients.

4. The application is opposed on the basis of a replying affidavit sworn by the Advocate/Respondent who avers that:

- a) There is no jurisdiction under Rule 11 (4) of the Advocates Remuneration order for stay of execution or proceedings or for setting aside of an order of taxation
- b) There is no jurisdiction to consolidate this cause with others as the parties and the subject matter of taxation in the 16 matters are not the same
- c) That this application concerns only the applicant **SUKWINDER SINGH CHATTHE and not the other 3 clients** RAGHBIR SINGH CHATTHE, CHANNAN SINGH CHATTHE and SATWANT SINGH CHATTHE and that the three have no capacity to make affidavits in this application
- d) That the bills were served by registered post as can be seen from the forwarding letter of 20.3.18 and certificate of posting marked PK-1 and PK-2 respectively for the reasons that the clients could not be found.
- e) That the Notice of Taxation and the bills of costs were served by registered post, with leave of court on 9.5.18, as can be seen from the advocate/respondent's affidavit sworn on 29.5.18, certificate of postage and forwarding letter marked **PK-4 to PK-7** respectively
- f) That the value of the subject matter of the 16 bills was 88,000,000/- and not 20,000,000/- and that each bill was taxed for Kshs. 15, 652,059/- each and not Kshs. 288,943,896/- as alleged by the Applicant/ Client
- g) That the taxed costs are not outrageous

5. In support of his response, the Advocate/Respondent placed reliance on a total of 15 authorities.

6. In his further affidavit, the Applicant/client avers that he has instructions from the Applicants/Clients in the other bills of costs to bring this application on their behalf for the reason that the bills arise from the same subject matter and each claims not to have been served with the bills or notices of taxation. He further avers that the address to which the bills and notices were sent has never belonged to them.

Analysis and Determination

7. I have carefully considered the notice of motion in the light of the affidavits on record and the submissions by Mr. Olel advocate for the Applicants/Clients and Mr. Karanja advocate for the Advocate/Respondent.

8. Section 2 of the Civil Procedure Act to which this application applies defines "suit" to mean all civil proceedings commenced in any manner prescribed. An application such as the one before court is a suit. Concerning the issue of consolidation, there is no dispute that the 16 bills in issue arise from the same subject matter. As the court observed in the case of **Korean United Church of Kenya & 3 Others V Seng Ha Sang (2014) eKLR**:

"Consolidation of suits is done for the purposes of achieving the overriding objective of the Civil Procedure Act, that is, for expeditious and proportionate disposal of civil disputes. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action".

9. In order to meet the ends of justice, and also bearing in mind the provisions of article 159 (2) (b) of the Constitution, I find that the Taxing Master did not err in consolidating the applications in issue.

10. Having said that, I find that the authority given by the other three Applicants/Clients to the in this case Applicant/Client and the affidavits of the other Applicants/Clients are properly on record in this application.

11. Coming to the issue of service, it is not disputed that the Taxing Master gave leave for service of the Bills of Costs and Notices of Taxation by registered post after she was convinced that the Applicants/Clients could not be personally served. There is evidence that the Bills of Costs and Notices of Taxation were sent to **P.O BOX 4381-40100 KISUMU**. The Applicant/Client averred that their previous address was **P.O BOX 4381-Kondele** and that it had been surrendered over 10 years ago. There is no evidence that the Applicants/Clients had surrendered the said postal address to which the Bills of Costs and Notices of Taxation were sent and on the authority of **Sifuna & Co Advocates v Akhtar Shahid Butt & Another [2018] eKLR**, I find that there was proper service and that the taxation of the bills and the decision thereof is regular.

12. Paragraph 11 of the Advocates Remuneration Order provides:

(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.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired. "

13. Paragraph 11 of the Advocates Remuneration Order is clear that the Court has discretion to extend time for lodging a reference notwithstanding the expiry of the 14 days period prescribed for the reference from the Taxing Master's decision on costs. However, in exercising its discretion in this regard, the Court should consider whether there has been inexcusable delay in presenting the application. The Advocate/Respondent has submitted that there was a delay of about 2 weeks which in his view is inordinate and that therefore the Court's discretion should not be exercised in the Applicant's/Client's favour. In my view, the 2 weeks delay cannot be said to be inordinate. To my mind, the Applicant/Client has given sufficient reason why this Court should exercise its discretion to grant the order sought for enlargement of time within which to file a reference against the decisions of Taxing Officer made on 31st May, 2018.

Decision

14. It is therefore hereby ordered that

- 1. The Client/Applicant be and is hereby granted an extension of time for 30 days to give notice in writing to the taxing officer of the items of taxation to which he objects.*
- 2. The Client/Applicant shall within fourteen days from the receipt of reasons file a reference as against the taxations in issue*
- 3. This order shall apply to MISC. CIVIL APPLICATION NOS. 34 to 48 of 2018*
- 4. Each of the 4 Applicants/Clients are condemned to pay the Advocate/Respondent Kshs. 10,000/- throw away costs within 7 days from today*

DELIVERED AND SIGNED IN KISUMU ON THIS 20TH DAY OF DECEMBER 2018

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For the Applicant/Client - Ms Otieno/Mr Olel

For the Advocate/Respondent - Ms Barasa/Karanja