



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL APPEAL NO. 1 OF 2014

(An appeal from the Ruling of the Principal Magistrate, Embu in PMCC No. 462 of 1994 dated 20/11/2013)

BEMUTA AGENCIES LIMITED.....APPELLANT/APPLICANT

VERSUS

JATOMY ENTERPRISES LIMITED.....1ST RESPONDENT

GEOFFREY GITAU.....2ND RESPONDENT

RULING

1. This is a ruling on an application dated 29/08/2016 seeking for orders that this honourable court be pleased to set aside and or vary the bill of costs dated 4/12/2015 as taxed on 29/01/2016 by the Deputy Registrar Hon. Nyakundi.
2. The grounds supporting the application are that the Deputy Registrar failed to comply with the law in taxing the bill of costs. The schedule of the Advocates Remuneration Order, 2014 applied was not indicated and schedule 6 and 7 were not applied. Items 16 and 17 were wrongly taxed separately contrary to paragraph 7(b) of the order while charges for attending court were assessed at Shs.1,000/= instead of Shs.500/=.
3. The same case applies to Items 13 and 14 were taxed contrary to schedule 6 paragraph (c). The Deputy Registrar gave costs even where the court was not sitting and generally exaggerated given that the matter was still pending in court.
4. The application was opposed by the respondent in its ground of opposition dated 15/09/2016. The first ground is that the application is bad in law, misconceived and an abuse of the due process of the court. Secondly, the application is said to be premature. It is further stated that the bill of costs was taxed in accordance with the Advocates Remuneration Order.
5. The applicant relied on the case of **PREMCHAND REICHAND VS QUARY SERVICES OF EA LTD & OTHER EALR [1972]** where it was held:-

(i) (a) *That costs be not allowed to rise to such a level as to confine access to the courts to the wealthy;*

(b) *That a successful litigant ought to be fairly reimbursed for the costs that he has had to incur;*

(c) That the general level of remuneration of advocates must be such as to attract recruits to the profession; and

(d) That so far as practicable there should be consistency in the awards made.

(ii) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.

6. The respondent in his submissions argued that the applicant did not comply with Rule 11(1) of the Advocates Remuneration Order. The rule requires that a party objecting to the taxing masters decision shall write requesting for reasons of the decision. The applicant failed to do so within 14 days and the court enlarged time but compliance was not forthcoming.

7. The court must first deal with the issue of competency of the application which has been challenged by the respondent. The provisions of the Advocates Remuneration Order Rule 11 are as follows:-

(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.

(4) 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.

8. The applicant was represented by an advocate during the taxation who was aware of the existence of Rule 11. When the applicant applied for stay of execution of taxation of the bill he was granted the orders including extension of time to comply with Rule 11(1).

9. The time was enlarged on 11/07/2016 with 14 days as a condition to allow the applicant file the relevant application. No action was taken in that regard and the extension of time became an order issued in vain.

10. This application was filed about 1½ months after the date of enlargement of time. It was brought under Rule 11(2) of the Advocates Remuneration Order which provides for the action of the Deputy Registrar should take after an aggrieved party raises objection in accordance with Rule 11(1).

11. The issue which arises is whether the applicant followed the procedure provided for by Rule 11. From the foregoing facts, the applicant did not raise his objection in writing within the stipulated time.

12. He did not request for reasons from the taxing master. The applicant there failed to comply with the law. Rule 11 does not provide for filing an application in the High Court to challenge taxation.

13. An aggrieved party must fully comply with Rule 11(1) before moving to the High Court to seek its opinion. This application is brought under Rule 11(2) which is wrong. This provision is the very one that the applicant has failed to comply with and cannot purport to bring this application using it.

14. The application for stay of execution of the taxed bill was filed in court about six months after the taxation. This demonstrates that the applicant is an indolent litigant who slept on his rights. When he was granted 14 days to file an application for extension of time to comply with Rule 11, the applicant failed to file the relevant application and instead filed this application.

15. In the case of ***HOUSING FINANCE COMPANY OF KENYA LTD VS EMBAKASI YOUTH DEVELOPMENT PROJECT 2 KLR [2004]*** it was held:-

Taxation of costs is the responsibility of the taxing master and not of the judge. In cases where the taxing master is seen to have departed from governing principles of law in the course of taxation, an appeal lies to a judge who will consider the relevant issues of law and make appropriate orders.

16. In view of the above case and the foregoing analysis, I am of the considered opinion that the application before me is incompetent for failure to comply with the law.

17. I hereby strike out with costs of the application dated 29/08/2016.

18. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF MARCH, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Muriuki for Kathungu for Respondent