



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPLICATION NO. 172 OF 2015

DAVID WAIGANJO KIGWE.....CLIENT/APPLICANT

VERSUS

ESHUCHI & ASSOCIATES ADVOCATES.....ADVOCATES/RESPONDENT

RULING

1. The Notice of Motion dated 20th April, 2016 seeks orders that:-

- 1. THAT leave be granted for the Applicant/Client to file his reference out of time.***
- 2. THAT this Honourable Court be pleased to review and/or set aside the taxation passed by the Deputy Registrar Honourable Makungu on the 24th March 2016.***
- 3. THAT the bill of costs dated 10th June, 2015 be taxed afresh by a different taxing master.***
- 4. THAT the costs of this application be in the cause.***

2. The application is premised on the grounds stated in the application and is supported by the affidavit and a supplementary affidavit sworn by the Applicant, **David .W. Kigwe**. It is stated that the taxation herein arose out of a case which is yet to be determined. That the parties had actually agreed at the sum of Ksh.160,000/- as the advocates fees. That the bill ought to have been taxed under the Advocates Remuneration Order 2012. That the ruling of the taxing master was delivered on 24th March 2016 and the reference was filed on 11th April 2016 within time but was erroneously filed in the wrong court and division.

3. The application is opposed. According to the replying affidavit, there was no agreement in respect of the Advocates fees and neither was there any agreement that the Respondent would conclude the matter. It is further stated that the Applicant participated in the taxation and even submitted that the bill be taxed at Ksh.541,000/=. It is further contended that there is no sufficient reasons given for the delay in filing the objection and that the application under consideration is an afterthought.

4. The Application was canvassed by way of written submissions which I have considered.

5. It is noted that although the Applicant has stated that there was an agreement between the parties that the fees payable was Ksh.160,000/=:, no such agreement has been exhibited herein. Such agreements are provided for under **Section 45** of the **Advocates Act**. The agreement must be in writing and signed by the

client or a duly authorized agent. There being no written agreement between the parties herein there is no valid agreement.

6. The Applicant has urged that the bill ought to have been taxed under the ***Advocates Remuneration Order 2012***. There is no such Remuneration Order. The Respondent's bill of costs was stated to be under ***Schedule VI of the year 2006 Remuneration Order***. The Bill was also taxed under ***Schedule VI the Advocates Remuneration Order 2006***. Although the instructions are stated in the Bill of Costs to have been given on 22nd April 2014 which falls under the ***Advocates Remuneration Order 2014*** which was gazetted on 11th April 2014, the Applicant is enjoying the lower rate and cannot therefore be heard to complain.

7. On the reasons given for not filing the reference within time, it is noted that the Applicant has exhibited a copy of a reference filed in the Chief Magistrates Milimani Commercial Courts, Nairobi on 11th April 2016. The ruling on taxation was delivered by the taxing master on 24th March 2016. Thus even the erroneous filing in the lower court was filed after 18 days and was therefore outside the 14 days provided for under paragraph No. 11 of the Advocates Remuneration Order. I find that no sufficient reasons have been given for the delay.

8. For the above stated reasons, I agree with the submissions by the Respondent's counsel that it has not been shown that either the taxing master's decision was based on an error of principle or that the fee awarded was so manifestly excessive as to justify any interference with the same. (See for example **FIRST AMERICAN BANK OF KENYA -VS- SHAIH & OTHERS (2002) EALR 64**).

9. The upshot is that the application is dismissed with costs.

Date, signed and delivered at Nairobi this 22nd day of June, 2017

B. THURANIRA JADEN

JUDGE