



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPLICATION NO. 189 OF 2015

SAMUEL KIVUTI CIRIBA..... APPLICANT

VERSUS

JOEL KITHAKA MARINGA..... RESPONDENT

RULING

1. This is a preliminary objection dated 22/06/2017 raised by the respondent against hearing this miscellaneous application dated 30/04/2017.
2. It is premised on the paragraph 11 of the Advocates (Remuneration) Order in that the applicant did not follow the procedure provided for therein for he ought to have filed the application in HCCA No. 62 of 2009 for which the taxation was done.
3. The facts are that the applicant was aggrieved by the orders of the Deputy Registrar in taxation of the bill in HCA No. 62 of 2009. He then filed this application seeking leave to file his objection or reference against taxation out of time.
4. The application was argued orally by the counsels for the parties. I have considered the brief arguments of the counsels and now proceed to look at the provisions of the law.
5. Paragraph 11 of the Advocates (Remuneration) Order provides for the procedure to be followed in raising an objection against taxation. It 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.*
 - (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.*
6. It is clear from paragraph 11 that if a party is not satisfied with the orders of the Deputy Registrar in taxation, he/she should seek reasons from the Deputy Registrar within a period of 14 days. The request and the reasons given will be put in writing.
7. In the event that the said party is not satisfied with the reasons given, he ought to approach the judge for a remedy who will then look at the reasons and the orders made by the Deputy Registrar and decide on the merit of the application. All these matters should be done in the same file in respect of which the bill was taxed.
8. The applicant has instead filed this miscellaneous application before this court seeking leave to file his objection. I agree with the respondent that the procedure provided for has not been complied with which renders this application incompetent.
9. If there was any need to seek extension of time, it ought to have been done before the Deputy Registrar in the same file.

10. I find the preliminary objection merited and I hereby uphold it.

11. This applicant's application before the court is therefore incurably incompetent and it is hereby struck out with costs to the respondent.

12. It is hereby so ordered.

DATED, DELIVERED AND SIGNED AT EMBU THIS 3RD OF AUGUST, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Momanyi for Njagi Wanjeru for Respondent and for

Mr. Andande for Applicant