



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. APPLICATION NO. 11 OF 2016**

**KAMAU KINGA & COMPANY ADVOCATES.....APPLICANT**

**VERSUS**

**GRACE WANJIKU KABIARU.....RESPONDENT**

**RULING**

1. This matter commenced as a miscellaneous application for assessment of costs as between an advocate and his client. The bill dated 3<sup>rd</sup> February 2016 was taxed in a ruling delivered by the taxing master on 22<sup>nd</sup> September 2016.
2. The respondent client then moved the court by way of a Motion dated 8<sup>th</sup> November 2016, filed herein on even date, seeking stay of execution of the taxed costs on grounds that she has filed an appeal against the taxation, which appeal is HCCA No. 97 of 2016. She argues that she was dissatisfied, and her appeal had merits.
3. The application is opposed. It is argued that the appeal is bad in law, for the applicant ought to have moved the High Court under Rule 11 of the Advocates Remuneration Order.
4. I have perused the record. I see that there is copy of a memorandum of appeal in HCCA No. 97 of 2016. It is dated 6<sup>th</sup> October 2016 and lodged in court on even date.
5. I need not assess its probability of success. I am only required to evaluate whether it was filed timeously and whether the appellant would suffer substantial loss. The ruling of the taxing master was delivered on 22<sup>nd</sup> September 2016, and the appeal filed on 6<sup>th</sup> October 2016; it cannot be said that there was unreasonable delay in moving the High Court on appeal. I trust execution would no doubt cost the appellant.
6. However, the law governing the matter is the Advocates Remuneration Order. According to it, an aggrieved party writes to the court asking for reasons for the taxation of certain items in a particular way. Once the reasons are given the aggrieved party then moves the court by reference according to Rule 11 of the Order. An appeal flows from the reference and not directly from the decision of the taxing master. In any event that appeal lies at the Court of Appeal with leave of court. It was not demonstrated that that was not done. There is therefore no proof that the procedure prescribed in the provisions of the Advocates Remuneration Order was complied with.
7. In the circumstances, I am persuaded that the orders sought are not available. I shall accordingly dismiss the application dated 8<sup>th</sup> November 2016, with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**W. MUSYOKA**

**JUDGE**