



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 89 OF 2009

CHARLES KARANJA MASHUAOBJECTOR/APPLICANT

VERSUS

- 1. JONAH MZEE ORUMOI**
- 2. ROSE TITO METUO**
- 3. JOSEPH PARSANE ORUMOY**
- 4. JULIUS SARUMUE ORUMOI**
- 5. THE ATTORNEY GENERAL.....DEFENDANTS/RESPONDENTS**

RULING

The Application

This ruling is on an application by way of a Chamber Summons dated 24th September 2015 brought by the Objector herein, pursuant to the provisions of Rule 11 of the Advocates Remuneration Order and sections 1A, 1B 3, 3A and 63(e) of the Civil Procedure Act. The Objector is seeking the following orders:

1. That the decision of the Taxing Officer in this matter in the party and party bill of costs between the 1st to 4th Defendant/Respondents and the Objector/Applicant made on 24th September 2014 be reviewed in its entirety.
2. That the Taxing Officer be directed by this Court to forward to the Objector the reasons for his/her decision on the bill of costs pursuant to the provisions of Rule 11(2) of the Advocates Remuneration Order.
3. That this Honourable Court be pleased to stay the hearing of the Notice to Show Cause dated 6th November 2014 pending the hearing and determination of the instant application.

The grounds for the application are stated in the said Chamber Summons and the supporting affidavit sworn on 24th September 2014 by Gideon Solonka Kilakoi, the Objector's Advocate. It is explained therein that the Taxing Officer made findings that no specific amount on value of the land was pleaded in the plaint, that the issues raised therein were not complex and that the suit herein was struck out and never did get to full hearing, yet proceeded to award an high amount of Kshs.800,000 as instruction fees and

getting up fees of Kshs.266,666/=.

Further, that despite the Objector issuing a notice of objection to the decision on taxation under rule 11(1) of the Advocates (Remuneration) Order, the Taxing Officer has failed to forward to the Objector the reasons for his/ her decision as required under the provisions of Rule 11(2) of the said Advocates (Remuneration) Order. The Objector fears that a Notice to Show Cause that has since been issued by the Respondents will be executed against him. The Objector attached copies of his notice of objection, copies of letters to the Taxing Officer asking to be furnished with the reasons for her decision and the Notice to Show Cause issued against him.

The Objector's Advocates, Solonka & Company Advocates filed submissions dated 19th November 2015 wherein it was urged that under rule 11(1) of the Advocates (Remuneration) Order, the Objector can only move the High court upon receiving the taxing officer's reasons for his decision. Reliance was placed on the decision in **Muriu Mungai and Company Advocates vs New Kenya Cooperative Creameries Limited, Misc Civ Cause 364 of 2007** for the position that the taxing officer misdirected herself in law by awarding the Respondent Kshs.1,123,946/= in a suit where the value of the subject matter cannot be determined from the pleadings and which did not proceed to full trial.

The Response

The Respondents' response is in a Replying Affidavit sworn on 21st October 2015 by their Advocate, Paul Amuga. According to the Respondents, the decision of the Taxing Officer that is being objected to was delivered on 24th September 2014, and the application herein having been filed after a period of more than one year, the same is out of time and is incompetent. Further, that the said application is also incompetent for failing to annex the decision which the Objector seeks to have reviewed.

The Respondents contended that the Objector as shown from his pleadings that he was aware of the reasons for the decision of the Taxing Officer, and that his notice of objection did not specify any items of the taxation to which he objected, and did not therefore amount to a valid notice of objection as envisaged under rule 11(1) of the Advocates (Remuneration) Order.

Amuga & Company Advocates for the Respondents filed submissions dated 1st December 2015. It was submitted therein that the typed ruling containing the Taxing Officer's reasons for taxation is in the court file and is dated 24th September, 2014. Therefore, that any reference under paragraph 11 of the Advocates (Remuneration) Order should have been filed within 14 days from the 24th September, 2014, and the Reference herein, having been filed on 25th September 2015 was out of time and should be struck out. Reliance was placed in this regard on the decisions in **Wambugu, Motende & Co. Advocates, -vs- Kajulu Holdings Limited and 5 others, High Court Miscellenous Cause No. 662 of 2012** and **Republic -vs- Otieno Kajwang, Minister for Immigration and Registration of Persons and Another, Exparte Mohamed Mohamed Sirat,(2014) eKLR**

It was further submitted that the Taxing Officer correctly determined and applied the correct Remuneration Order which was in force at the time of filing suit, being the Advocates (Remuneration) Order, 1997. Further, that the Taxing Officer was also cognizant of the prayers which were sought in the plaint and correctly considered the fact that the subject matter of the suit was over 600 acres of land which is very valuable. As for the award of getting up fees, it was submitted that the Taxing Officer properly considered the fact that the suit had been fixed for hearing more than once, and she correctly held that once a hearing date has been obtained and served upon the other party, it follows that the other party must prepare for hearing.

Lastly, it was submitted by the Respondents that the Taxing Officer exercised her power and discretion under the law correctly, and that the amounts awarded as instructions fees and getting up fees are not too high as to amount to errors of principle on her part. Moreover, that it is not this Court's duty to substitute its own figures for those awarded by the Taxing Officer, and can only interfere where it shown that the Taxing Officer erred in principle, which has not been demonstrated.

The Issue and Determination

I have considered the arguments made by the parties, and find that the issue for determination is whether the Objector has established grounds for the grant of the prayers he seeks. The applicable provisions as to the filing of objections and references from decisions of taxing officers are found in rule 11 of the Advocates Remuneration Order, which provides 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 subparagraph (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.”

I have perused the correspondence attached by the Objector as evidence of the requests for reasons for the Taxing Officer’s decision. In particular the notice of objection dated 2nd October 2014 reads as follows:

“We hereby give notice of objection to taxation of the above matter:-

1. Respondent’s Bill of Costs dated 25th November 2013”

However, Rule 11(1) of the Advocates Remuneration Order required the Objector to specify the items that he was objecting to, and the Taxing Officer is only obliged under the Order to give reasons to specific items. Indeed, upon perusal of the court record, it is shown that the Taxing Officer did respond to the Objector by way of a letter dated 27th January 2015 requesting for the items in the Bill of Costs he was objecting to. No evidence was availed by the Objector to show that he availed the said items.

In addition, the review of the taxing officer’s decision that is requested by the Applicant can only be in the context of Rule 11 of the Advocates Remuneration Order, and therefore only on particularized items, as taxation under the said Order is guided by the items indicated in the various schedules of the order.

The prayers sought in the Chamber Summons dated 24th September 2015 are accordingly denied for the foregoing reasons, and the Objector shall bear the costs of the said Chamber Summons

Orders accordingly.

Dated, signed and delivered in open court at Machakos this 27th day of January 2016.

P. NYAMWEYA

JUDGE