



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
MISC APP NO 9 OF 2015

Mbeu Kithakwa.....Appellant/Respondent

versus

Philip Muchiri Mugo.....Respondent/Applicant

RULING

On 6th November 2015, the Respondent herein filed a notice of motion seeking judgement to be entered for **Ksh. 69,990/=** on the strength of a certificate of taxation dated 11th August 2015 annexed to the supporting affidavit. In the court file there is a letter filed in court on 19th August 2015 by the Applicant objecting to the said taxation and I find it necessary that I address myself to the effect of the said letter. The letter was addressed to the Deputy Registrar and copied to Gachiri Kariuki & Co advocates.

The advocates Remuneration Order under paragraph **11** provides the procedure for objecting to a taxation. Paragraph **11 (1)** and **(2)** provides as follows:-

***11 (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.*

It is clear from the above that the objection procedure is in three stages. The first is the objecting party giving notice to the taxing officer to the items in the taxed bill of costs he objects to. Secondly, the taxing master is obliged to forthwith give reasons for taxing of the items objected to. Thirdly, the objector within fourteen days of receipt of the taxing officers reasons must file a reference before a judge.

The taxation was done on 7th August 2015. The aforesaid letter objecting to the entire taxation was filed in court on 19th August 2015 within the required fourteen days. To date, the taxing officer does not seem to have responded to the said letter. To me, that is a serious omission which cannot be entertained.

The applicant is entitled to the above process which must be followed to the letter. In this connection, I find useful guidance in the case of *Brigita vs V. N. Okata & Co advocates*^[1] where **Kasango J** set aside a taxation and ordered re-taxation for failing to adhere to the above procedure.

A similar position was held by **Judge Olga Sewe** in *Kagwimi Kangethe & Co advocates vs A.A. Kawir*

Transporters Ltd[2] where the learned judge had this to say:-

"Paragraph 11 of the Advocates Remuneration Order permits a party to challenge the Taxing Master's decision by way of objection by a chamber summons. That provision also stipulates that such an application can only be filed upon the Deputy Registrar furnishing reasons for taxation. The Respondent has demonstrated that such reasons have been sought from the Deputy Registrar and such reasons have not been supplied"

My understanding of the above rules is that once the reason have been sought as in the present case, the same must be provided for the dissatisfied party to file the Chamber Summons objecting to the Taxation. Since the reasons have not been provided in the present application, the Respondent in this application cannot be faulted, nor would it be proper for the applicant to pursue the costs as they are trying to do.

For the above reasons, I find that the application dated 6th November 2015 is premature and cannot be entertained. Accordingly, I dismiss the said application with costs to the Respondent.

Orders accordingly

Dated at Nyeri this 14th day of March 2016

John M. Mativo

Judge
