



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL MISC APP 96 OF 2016**

**M/S KHAN & ASSOCIATES ADV.....APPLICANT**

**VERSUS**

**JOSEPH KARIUKI MUGO.....RESPONDENT**

**RULING**

1. This application is brought by way of notice of motion pursuant to the provisions of sections 1 (a) (b) (c) and 3 (a) of the Civil Procedure Act (Cap 21) Laws of Kenya and sections 51 (1) and (2) of the Advocates Act, (Cap 16) Laws of Kenya and all other enabling provisions of the law. It seeks the following orders:

1. That leave be granted to the applicant to tax the advocate – client bill of costs.
2. That upon granting leave, the applicant's bill of cost be taxed as drawn
3. That costs of the application be borne by the respondent.

2. The application is based on the following grounds. The first one is that the respondent instructed the applicant to file recovery of compensation in respect of a road traffic accident that occurred on 2<sup>nd</sup> September 2013, in which the respondent was seriously injured. The second ground is that the applicant then filed civil case No. 17 of 2015 in the court of the Principal Magistrate at Siakago. The third ground is that the respondent withdrew his instructions from the applicant during the pendency of the said suit and proceeded to settle it out of court. The fourth ground is that following the withdrawal of his instructions, the applicant states that he is entitled to fees for work done up to the time when the instructions were withdrawn. Fifthly, the applicant states that it is in the interest of justice to allow the application and have the applicant's costs taxed as drawn by the applicant in his advocate client bill of costs which is annex DZO7.

3. In his supporting affidavit, the applicant has repeated the grounds of appeal by restating them in his affidavit. However, he has added that in compliance with the instructions from the respondent, the applicant filed a compensatory recovery suit in Siakago SPMCC No. 17 of 2015, upon subjecting the respondent to a medical examination by Dr. Njiru. He has further deponed that the respondent testified in court in support of his compensatory claim on 3<sup>rd</sup> December 2015. He has deponed that the case was only awaiting delivery of the judgement after filing of the submissions and that it was at that point in time that the respondent suddenly withdrew the instructions from the applicant.

4. It is the applicant's further affidavit evidence that the respondent proceeded to file notice to act in person and thereafter they recorded a consent order with the defendant. Finally, the applicant depones

that the respondent is not willing to pay the applicant's fees for work done and it is for that reason that he now seeks leave to file his bill for taxation.

5. The application of the applicant is unopposed. It proceeded in the absence of the respondent after I was satisfied that he was properly served and had adequate notice of the hearing of this application.

6. This application raises a number of legal issues. First, it is clear from the affidavit evidence that the applicant was not retained by the respondent. Secondly, the issue of taxation is in law and in practice done by the Deputy Registrar of this court. Thirdly, it is not clear as to why leave is being sought to have the advocate client bill of costs to be taxed. According to **section 51 of the Advocates Act (Cap 16) Laws of Kenya**, the issue of taxation is a matter for the taxing officer. In terms, the provisions of that section are as follows:

***“(1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.***

***(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgement be entered for the sum certified to be due with costs.”***

7. It is clear from the foregoing provisions that there was no requirement that an advocate has to seek leave of the court to have his bill taxed. Furthermore, according to the Remuneration Order in Rule 10, the taxing officer under that Rule is the Registrar or Deputy Registrar or a District Registrar or such other qualified officer as the Chief Justice may appoint in writing.

8. In the light of the foregoing provisions of the law and taking into account that the applicant was not retained by the respondent, the matter is hereby transferred to the Deputy Registrar of this court for taxation purposes. Thereafter, the applicant may proceed to file a recovery claim against the respondent.

9. There will be no orders as to costs.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **17<sup>th</sup>** day of **AUGUST 2016**

In the presence of Mr Adande holding brief for Mr Ogweno for the applicant and in the absence of the respondent.

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**17.08.16**