



**REPUBLIC OF KENYA**

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

**CIVIL MISC. APPL. NO. 197 OF 2005**

**RUSTAM HIRA..... ADVOCATE/APPLICANT**

**V E R S U S –**

**ORIENTAL COMMERCIAL BANK LTD (FORMERLY DELPHIS BANK  
LTD.....RESPONDENT/CLIENT**

**RULING**

1. The subject matter of this ruling is the Chamber Summons dated 23<sup>rd</sup> February 2016 and taken out by Oriental Bank Ltd formerly known as Delphis Bank Ltd, the Client/Respondent herein, whereof the Client/Respondent sought for inter alia that the decision of the taxing officer delivered on 30.6.2009, the consequential certificate of taxation and other orders to be set aside/ varied and the Bill of Costs be remitted back for taxation before a different taxing officer.

2. The Client/Respondent also asked to be paid costs of the reference. The aforesaid summons is taken out pursuant to paragraph 11 (1) (2) and (4) of the Advocates (Remuneration) Order. It is supported by two affidavits sworn by Wilfred Kenneth Machini. When served, Rustam Hira Advocate, filed a replying affidavit he swore to oppose the reference. When the summons came up for hearing, learned counsels appearing in this reference made oral submissions.

3. I have considered the grounds stated on the face of the summons plus the facts deponed in the affidavits filed in support and against the application. I have also taken into account the oral rival submission presented by learned counsels. It is the submissions of Mr. King'ara, learned advocate for the Client/ Applicant that the taxing officer did not give reasons to enable the applicant file a reference despite having been requested to do so. It is also argued that the taxation on items no.s 29, 41, 340, 383, 454, 506, 314, 573 and 574 was whimsically done and in total disregard of legal provisions and the principles that govern taxation of Advocate/Client Bill of Costs. The Client/Applicant further argued that the taxing officer erred in law and in principle in the exercise of his discretion in awarding full instructions for a trial that had not taken place and which had not been confirmed. It is also submitted that the taxing officer failed to apply the correct schedule in taxing the bill leading to an exorbitant figure being given. Mr. King'ara further pointed out that the taxing officer erred when he entertained and taxed a composite bill. The Client/Applicant also complained that the taxing officer erred when he failed to take into account payments made to the advocate.

4. In response to the Client/Applicant's submissions, Mr. Were, learned advocate for the Advocate/Respondent argued that time to file a reference had lapsed since the taxing officer who took over from Hon. Muya, had pointed out that the reasons were available within the court file and that the same could have been provided administratively. Mr. Were further argued that it was not open to the Client/Applicant to object to the taxation in respect of items no. 29, 41, 450 and 30 because they were taxed in terms of the proposals tendered by the Client/Applicant. The Advocate/Respondent also argued that the issue touching on the filing of a composite Bill of costs was raised and argued before the taxing officer who made a decision which no appeal has been preferred hence the objection is resjudicata and statute barred.

5. Having set out in brief the divergent positions taken by the Parties, let me consider the merits or otherwise of the summons. The Client/Applicant has strongly argued that it was not supplied with reasons. The Advocate/ Respondent has deponed that Hon. Makungu stated on 20.7.2015 that the reasons were available on record. I have carefully perused the proceedings taken before Hon. Makungu on

20/7/2015 and it is clear that the learned taxing officer stated in her ruling of 20.7.2015, that the issue relating to the supply of the reasons for the taxation will be handled administratively and parties supplied with the same for further action. The ruling did not state that the reasons were contained in the ruling. I am convinced by the submission of the Client/Applicant that the taxing officer never furnished the Client/Applicant with the reasons for the taxation. The argument that the reference was time-barred cannot therefore stand.

6. The Client/Applicant has argued that the taxation on items nos. 29, 41, 340, 383, 454, 506, 314, 573 and 574 was whimsically done without making reference to the parent files and in total disregard of the legal provisions and the principles governing taxation of advocate-client Bill of Costs. The Advocate/Respondent has merely stated that the taxing officer taxed the aforesaid items as proposed by the Client/Applicant. I have looked at the record and it is apparent that the taxing officer taxed those items as proposed by the Client/Applicant save for a few variations here and there.

7. The Advocate/Respondent did not contest the submission that the learned taxing officer did not take into account the applicable provisions of the Advocate (Remuneration) Order. He did not also controvert the assertion that the taxing officer did not consider the relevant principles. In my humble view, the fact that a taxing officer taxed the Advocate-Client bill of costs as proposed by the Client/Applicant, did not excuse the taxing officer from applying the applicable legal provisions and the principles to the taxation. I am convinced that the learned taxing officer erred and therefore his decision must be interfered with by this court.

8. A serious submission was made by the Client/Applicant to the effect that the parent files were not availed to the taxing officer hence he taxed the bills without any pleadings thus he made an award which was exorbitant. The Client/Applicant pointed out that the Advocate/ Respondent presented a composite bill for work purportedly done in the Court of Appeal, in the Commercial court and other foras without any iota of evidence that such work was actually done. It was submitted that the Bills were prematurely filed prior to the conclusion of the various work purportedly done. I have perused the ruling on taxation made by Hon. Muya dated 30.6.2009, in page 2 of the aforesaid ruling, the taxing officer expressly stated that he did not have the benefit of perusing the files. With respect, I agree with the submissions of Mr. King'ara that in the absence of those files it was impossible for the taxing officer to make an appropriate assessment of an award on taxation. On this ground the taxation by Hon. Muya has to be impugned.

9. There is further an argument that the filing of a composite Bill of Costs is not recognised by the Advocates (Remuneration) Order. Both learned counsels are in agreement that there is no provision for filing a composite Bill of Costs. There is also no provision outlawing the filing of the same. This issue was not conclusively determined by the taxing officer who handled the Bill of taxation because the parent files were never availed. In my view it is an issue which can as well be revisited because I intend to order that the taxation be redone before another taxing officer.

10. In the end and on the basis of the above stated reasons, I find the reference vide the summons dated 23.08.2016 to be well founded. It is allowed in terms of prayer 2 with costs to the client/applicant.

**Dated, Signed and Delivered in open court this 16<sup>th</sup> day of September, 2016.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Advocate/Applicant

..... for the Respondent/Client