



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISCELLANEOUS CAUSE NO. 334 OF 2014

TRUST BANK LIMITED.....CLIENT/APPLICANT

VERSUS -

CHEPTUMO & COMPANY ADVOCATES.....ADVOCATE/RESPONDENT

RULING

1. The client, **TRUST BANK LIMITED** has asked the court to grant it an extension of time within which to give a Notice of Objection to the Taxation.
2. The client also asks the court to set aside the Certificate of Taxation.
3. Thirdly, the client asks the court to declare that the Bill of Costs dated 15th July 2014 was time-barred.
4. A perusal of the record reveals that the Advocate/Client Bill of Costs was filed in court on 17th July 2014.
5. Upon the face of the said Bill of Costs, it is stated by the Advocate that he was instructed on 19th September 2001.
6. The Advocate also indicates (*at item No. 11*) that he received the client's letter instructing him to close the subject file.
7. On 9th October 2014, the Client filed a Notice of Preliminary Objection, which raised the following 2 points of objection;
 - “1. *The bill as filed offends the mandatory provisions of Section 50 (1) of the Advocates Act.*
 2. *The Advocates bill is hopelessly misconceived, frivolous, totally devoid of any merit whatsoever or at all?.*
8. When the matter came up before the Taxing Officer on 10th February 2015, the client expressed the view that the Preliminary Objection ought to be disposed of first, before the taxation exercise could proceed.

9. The court record does not indicate the position taken by the Taxing Officer.
10. But it would appear that the parties were directed to file written submissions on the Preliminary Objection.
11. On 24th September 2015 the Taxing Officer noted that both parties had filed their respective submissions, and she then informed the parties that she would deliver her Ruling on 29th October 2015.
12. The Taxing Officer's decision was that she did not have the requisite jurisdiction to determine the Preliminary Objection. Therefore, she downed her tools, and referred the matter to a Judge.
13. Regrettably, notwithstanding the fact that the Taxing Officer had expressly indicated that the issue raised in the Preliminary Objection would be determined by a Judge, there is nothing in the court records to show that the file was ever placed before a Judge.
14. Instead, the process of taxation proceeded before the Preliminary Objection was determined.
15. In the circumstances, I have come to the inescapable conclusion that the Taxing Officer erred by proceeding with the taxation before a Judge had determined the Preliminary Objection.
16. Therefore, on that basis alone, the Certificate of Taxation, which is the product of the irregular process of taxation is hereby set aside.
17. I also set aside and expunge from the court file all the proceedings which went on before the taxing officer after she had concluded that she lacked jurisdiction to determine the Preliminary Objection.
18. The tools of the Taxing Officer are deemed to have remained on the ground where she had downed them on that date. The said tools may or may not be taken up again by the Taxing Officer, depending on the decision made by a Judge, on the Preliminary Objection.
19. I am alive to the fact that both parties had filed written submissions on the Preliminary Objection. But I hold the view that fairness demands that the parties be given a further opportunity to determine for themselves whether or not they may wish to file other or further submissions before the court can proceed to determine the Preliminary Objection.
20. The costs of the application dated 5th April 2016 shall be in the cause. The party who is successful in the Preliminary Objection will also be awarded the costs of the application dated 5th April 2016.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of October 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Weru for the Client/Applicant

Odhiambo for the Advocate/Respondent

Collins Odhiambo – Court clerk.