



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

PETITION NO. 21 OF 2014

**IN THE MATTER OF ARTICLES 22, 23 AND 165 (3) (B) OF THE CONSTITUTION OF
KENYA 2010**

AND

**IN THE MATTER OF CONTRAVENTION OF ARTICLE 10 (2) AND (2), 28, 36, 37, 40, 47 AND
73 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF CO-OPERATIVE SOCIETIES ACT, CAP 490 AND THE BY-LAWS OF
OTHAYA FARMERS COOPERATIVE SOCIETY LIMITED**

NYERI SOUTH SUB-COUNTY CO-OPERATIVE OFFICER

NYERI SOUTH SUB-COUNTY ADMINISTRATOR

NYERI COUNTY CO-OPERATIVE COMMISSIONER

EXECUTIVE SECRETARY FOR AGRICULTURE

& CO-OPERATIVE DEVELOPMENT.....APPLICANTS/ RESPONDENTS

VERSUS

JOHN GITHINJI WANGONDU

KARIUKI KIBOI

PHILIP MAINA KANYORA

CHRISTOPHER NDIRANGU KIBARA

SIMON GACHOKA KIAGO

DAVID MUCHIRI MATU

EDWARD WACHIRAGITHAMBO.....RESPONDENT/PETITIONERS

RULING

By an application dated 5th May 2016 the applicants seeks to set aside the Taxing Master's order dated 20th April 2016 taxing the applicants bill of costs dated 18th January 2016 on grounds that the bill of costs was not taxed in accordance with the Advocates Remuneration (Amendment) Order, 2014, Schedule 6, paragraph 1 (j) (ii) and other applicable paragraphs. In the said bill the applicants claimed **Ksh. 781,080/=** but the taxing master taxed it at **Ksh. 85,235/=**.

Counsel for the applicants filed an objection to the taxation on 26th April 2016. Before delving in to the merits or otherwise of the application, I deem it necessary to address the procedure to be adopted in challenging the Taxing Masters decision as provided under the rules.

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 20th April 2016. The applicant filed their objection to the Taxation objecting to the taxation decision and the same was filed in court on 26th August 2015 within the required fourteen days. To date, the taxing officer does not seem to have responded to the said objection nor have reasons been offered as stipulated under the above rule. To me, this is a serious omission of procedure provided clearly under the rules which cannot be overlooked.

The applicant is required to observe 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. I find no legal basis or justification to adopt a different procedure other than the procedure provided under the above rule.

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."(Emphasis added).

My understanding of the above rules is that once the reason have been sought or an objection to the taxation has been filed as in the present case, the reasons 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, it would be pre-mature to entertain the present application.

For the above reasons, I find that the application dated 5th May 2016 is premature and cannot be entertained at this stage because entertaining the application at this stage would be tantamount to ignoring the clear provisions governing the appropriate procedure in matters of this nature.

Accordingly, I dismiss the application dated 5th May 2016 for being pre-mature with no orders as costs. However, for the interests of justice and fairness and guided by the provisions of sections **1 A & 1 B, 3 & 3A** of the Civil Procedure Act^[3] and Article **159 (2) (d)** of the constitution and in particular the requirement to determine disputes without undue regard to technicalities of procedure and the need to determine disputes on merits, I grant the applicant leave to file a fresh application after due compliance with the provisions of Rule **11 (1) & (2)** of the Advocates Remuneration Order cited above.

Orders accordingly

Dated at Nyeri this 24th day of November 2016

John M. Mativo

Judge

Delivered at Nyeri this.24thday of November.2016

Hon. Justice Jairus Ngaah

Judge

^[1] Misc App No. 29 of 2014, Mombasa

^[2] Misc Cause No. 731 of 2012

^[3] Cap 21 Laws of Kenya