



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**JUDICIAL REVIEW NO. 10 OF 2012**

**MUNICIPAL COUNCIL OF NYERI.....APPLICANT**

**VERSUS**

**DAVID NGUNJIRI MURIITHI-PATRON**

**ERASTUS KIAMA GICHUKI-CHAIRMAN**

**EPHRAHIM MWANGI WACHIRA-COMMITTEE MEMBER**

**AS OFFICIALS AND TRUSTEES OF UNITED SOCIAL CLUB.....RESPONDENT**

**THE HON. ATT. GENERAL**

**(ON BEHALF OF COMMISSIONER OF LANDS).....INTERESTED PARTY**

**RULING**

By an application dated 5<sup>th</sup> May 2016, **Municipal Council of Nyeri** (hereinafter referred to as the applicant) seeks an order to set aside the Taxing Master's order dated 22<sup>nd</sup> April 2016 taxing the applicants bill of costs dated 10<sup>th</sup> February 2016 on grounds that the bill of costs was not taxed in accordance with the Advocates Remuneration (Amendment) Order, 2014, Schedule 6, paragraph 1 (b). In the said bill the applicant claimed **Ksh. 598,698/=** but the taxing master taxed it at **Ksh. 92,500/=**.

Counsel for the applicant submitted that the suit involved a Judicial Review proceeding which was dismissed for want of prosecution and that such proceedings are governed by schedule 6A (j) of the advocates Remuneration (Amendment) Order, 2014 which provides for a fee of not less than **Ksh. 45,000/=** where the matter is not opposed and a sum of not less than **Ksh. 100,000/=** where the matter is opposed and is found to satisfy the criteria under the said rule, that is nature and importance of the matter, complexity etc. Counsel submitted that the reasons offered by the taxing master that the petition was not heard are erroneous.

Counsel cited the cases of *Green Hills Investments Ltd vs China National Complete Plant Export Corporation*,<sup>[1]</sup> *Republic vs Kenya Revenue Authority Ex Parte Middle East Bank Limited*<sup>[2]</sup> and *Wambugu Mtende & Co Advocates vs Attorney General of Kenya*<sup>[3]</sup> where the court ably expressed the principles which should guide a court in exercising discretion in cases of this nature.

Counsel submitted that the instruction fees ought to have been allowed as drawn and cited schedule 6 paragraph 2 which provision provides that fees for getting up should not be less than one third of the instruction fees allowed on taxation and also cited other errors of principle in the bill of costs.

The application is opposed. Counsel for the Respondent submitted that the applicant did not comply with the procedure laid down under Rule 11 of the Advocates Remuneration Order. The objection raised by the Respondents counsel raises a fundamental question of the procedure to be followed in challenging a decision of the taxing master. I propose to address this issue first.

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 22<sup>nd</sup> April 2016. The applicant filed its objection to the Taxation on 26<sup>th</sup> April 2016 objecting to the taxation decision and the same was filed in court on 26<sup>th</sup> 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*[4] 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*[5] 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 5<sup>th</sup> 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 5<sup>th</sup> May 2016 for being pre-mature with no orders as costs. However, for the interests of justice and fairness and guided by the provisions sections **1 A & 1 B, 3 & 3A** of the Civil Procedure Act[6] 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 **24<sup>th</sup>** day of **November**, 2016

**John M. Mativo**

**Judge**

Delivered at **Nyeri** this **24<sup>th</sup>** day of **November**, .2016

**Hon. Justice Jairus Ngaah**

**Judge**

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[1]Milimani Comm Courts Civil Case No. 572 of 2000

[2]{2012}eKLR

[3] {2013}eKLR

[4] Misc App No. 29 of 2014, Mombasa

[5] Misc Cause No. 731 of 2012

[6] Cap 21 Laws of Kenya