



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO 706 OF 2008

TWIGA MOTORS LIMITED.....PLAINTIFF

VERSUS

HON. DALMAS OTIENO ONYANGO.....DEFENDANT

RULING

INTRODUCTION

1. The Plaintiff's Chamber Summons application dated 27th May 2014 and filed on 28th May 2014 was brought pursuant to the provisions of Rule 11 (2) of the Advocates Remuneration Order. It sought the following orders:-

1. **THAT the taxing master's decision rendered on 6th February 2014 on the Applicant's party and part (sic) bill of costs be set aside.**
2. **THAT this Honourable Court be pleased to review the decision of the taxing master rendered on 6th February 2014 by taxing the bill of costs filed by the Applicant as drawn.**
3. **THAT the costs of the application be borne by the Respondent.**

THE PLAINTIFF'S CASE

2. The said application was premised on the grounds on the face of the said application that have been summarised herein below. The effect of this was that the Taxing Master erred in law and principle by:-

- a. **Failing to allow the Instruction fees as had been drawn by the Plaintiff.**
- b. **Disallowing the getting up fees.**
- c. **Disallowing appearances before the judge on a higher scale.**
- d. **Taxing off Kshs 200/= for commissioning of Affidavits of Service.**
- e. **Disallowing disbursements which were supported by the receipts in the court file.**

f. Disregarding the nature and complexity of the matter thus reducing the amount claimed.

3. Its written submissions were dated and filed 12th August 2014.

THE DEFENDANT'S CASE

4. In opposition to the said application, on 23rd July 2014, Owino Opiyo, the Defendant's counsel swore a Replying affidavit on behalf of the Defendant. The Defendant's case was that the Taxing Master did not err in law and principle and actually arrived at a correct decision. Its written submissions were dated and filed 25th August 2014.

LEGAL ANALYSIS

5. Before the court could delve into the analysis of this case, it found it prudent to look at the manner in which the present application had been filed. It was not supported by any affidavit which could have assisted the court in establishing whether or not the Plaintiff's application complied with the provisions of the law.

6. Under Rule 11 of the Advocates Remuneration Order, it is stated as follows:-

1. Should any party object to the decision of the taxing master, 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 reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge in chamber summons, which shall be served on all the parties concerned setting out the grounds of objection.

7. Bearing in mind that the decision of the taxing master was rendered on 6th February 2014, the court was unable to understand the circumstances under which the Plaintiff filed its present application on 27th May 2014, which was more than three (3) months from the date the said decision was given.

8. The time limits in Rule 11 of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.

9. In the absence of any affidavit evidence by the Plaintiff annexing copies of the decision it wanted the court to review, the letter giving the taxing master notice of the items it was objecting to and response from the Taxing Master with a view to establishing whether or not its application was filed timeously, the court had no option but not to attach any weight to the said application, the Defendant's Replying Affidavit and written submissions by both the Plaintiff and the Defendant. Notably, it was not clear to the court to what the Defendant was responding to as there was no affidavit that had been sworn by the Plaintiff in support of its application.

DISPOSITION

10. Accordingly, the upshot of this court's ruling was that the Plaintiff's Notice of Motion application dated 27th May 2014 and filed 28th May 2014 was fatally defective and incompetent in the first instance. The same is hereby dismissed with costs to the Defendant.

11. It is so ordered.

DATED and DELIVERED at NAIROBI this 26th day of January 2015

J. KAMAU

JUDGE