



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS NO. 595 OF 2013**

**OKUNDI & COMPANY..... PLAINTIFF**

**VERSUS**

**KENINDIA ASSURANCE CO. LTD.....DEFENDANT**

**RULING**

The applicant – client ‘s chamber summons dated 20<sup>th</sup> June 2014 and filed in court on 24<sup>th</sup> June 2014 seeks from this court orders for

- a) Leave be granted upon the applicant to file his notice of objection after the lapse of the stipulated 14 days.
- b) Costs of the application be provided for the said application.

The said application brought under the provisions of paragraph 11 (4) and (5) of the Advocates Remuneration Order 2009 is premised on the grounds that:

- 1) The applicant/ Respondent vehemently objects to the bill of costs taxed thereto by the learned Deputy Registrar of this court.
- 2) That leave of this court is required to enable the applicant file its Notice of objection to taxation out of time so that it can challenge the decision of the Deputy Registrar.
- 3) The application is brought to safeguard the interests of the applicant and to avoid miscarriage of justice.
- 4) The taxation of the bill proceeded exparte and the applicant has a right to be heard and desires to challenge the bill which can only be done when the stipulated time is extended.
- 5) The Bill of costs allowed as drawn by the respondent/applicant is statute barred hence valid grounds for challenging it.

The application is further supported by the affidavit of Kinyanjui Theuri advocate sworn on 20<sup>th</sup> Jun 2014 and the annexures thereto.

The Respondent- client's advocate, on record were served with the application on 30<sup>th</sup> June 2014 as shown by the affidavit of service sworn by Tom Murangiri Nkonge process server on 30<sup>th</sup> June 2014 and filed in court on 16<sup>th</sup> December 2014 but they neither filed any grounds of opposition/ replying affidavit nor did they attend court for the hearing of the application.

In support of the application herein, Miss Kola advocate for the applicant submitted, relying on the grounds on the face of the application the supporting affidavit and annexures thereto, urging the court to grant the prayers sought as the application was meritorious and the same was unopposed.

I have carefully considered the application as filed and supported by submissions by Counsel and the annexures thereto.

The issue for determination is whether the applicant has met the condition for granting of the order sought, for leave to file notice of objection after the expiry of the stipulated 14 days after taxation of the bill. The applicable law is paragraph 11 of the Advocates Remuneration order which provides:-

- 1) " Should any party object to the decision of the taxing officer, he may within 14 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 decisions on those items and the objector may within 14 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.
- 3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the court of Appeal.
- 4) The High court shall have power in its discretion by order to enlarge the time fixed by sub paragraph (1) or sub paragraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already enlarged.

From the above provisions of the Law, it is clear that there indeed exists a legal regime under the Advocates Remuneration Order for challenging the taxation of bills of costs and even for enlargement of time where such challenge is overtaken by the stipulated period. It therefore follows that the Civil Procedure Rules do not apply and hence, the applicant's previous attempts to set aside the taxation using the Civil Procedure Act and Rules were a reflection of ignorance of the relevant law and processes, giving rise to the delay in filing an appropriate reference in several other similar matters including H.C Misc. Application 796 and 798/ 2013 and were all futile attempts that consumed very precious judicial time and resources. I say waste of judicial time and resources because the bills were taxed on 4<sup>th</sup> February 2014 between advocate and client and instructions were given to the present advocates Kinyanjui Theuri to challenge the taxation the following day 5/2/2014 they filed their Notice of appointment of Advocates on 12<sup>th</sup> February 2014 in several of those similar matters and instead of seeking by way of notification in writing to the taxing officer for reasons for taxation on the specified items and or filing a reference by way of a chamber summons as required under paragraph 11 of the Advocate's Remuneration order, they filed Notices of Motion pursuant to the provisions of order 10 Rule 11, order 22 Rule 22, Order 51 Rule 1 of the Civil Procedure Rules Section and 3A of the Civil Procedure Act seeking for setting aside of entire proceedings of taxation and stay of execution of the taxed bills and seeking for unconditional leave to defend.

Indeed, Hon Justices Waweru J and Hon. Justice Onyancha J were correct in finding that those Notices of motion in HC Misc. Application 798/2012 and HC Misc. Application 796/2013 were incompetent and that the correct procedure was the application of paragraph 11 of eh Advocate's Remuneration Order.

Having said all that, it is clear that the applicant is now on the right track after straying. They are seeking for enlargement of time under paragraph 11 (4) and 11 (5) of the Advocate's Remuneration order, to enable them file a reference challenging the taxed bill of costs.

As reproduced above, the provisions give an allowance for the court to exercise its discretion to enlarge time for filing of notice of objection to the items of taxation to which a party objects, such time having elapsed 14 days after the taxation on 4/2/2014. It is only after receiving the reasons for taxation on the items that the objector can file a reference setting out grounds of objection, which objection by way of reference to a judge must be filed within 14 days from the date of receipt of the reasons for the decision by the taxing officer.

In this case, the applicant has served the Respondent- client's advocate with the appropriate application and notice of hearing of this application but they have not opposed the same and neither did they attend court at the hearing.

Although the application was filed after 4 months delay, the said delay has been explained and is excusable. In my view, that explanation is acceptable and as it is not inordinate or deliberate, I accordingly grant the applicant the prayer sought in their application dated 20<sup>th</sup> June 2014 enlarging time within which to file notice of objection to taxation done on 4/2/2014.

Such notice in writing shall be filed and served within 7 days from the date of this ruling and thereafter the usual processes under paragraph 11 of the Advocates Remuneration order shall take effect as provided in rules (2) and (3) thereof.

I make no orders as to costs of the application dated 20<sup>th</sup> June 2014.

**Dated, Signed and Delivered at Nairobi this 17<sup>th</sup> day of February, 2015**

**R.E. ABURILI**

**JUDGE**

**Court: Further Orders**

That this ruling shall apply to HC Misc. Application No. 796/13. This is intended to save on judicial time as the application relate to a similar taxation done on 6/2/2014 by the same taxing master.

**R.E. ABURILI**

**JUDGE**

**18/2/15**

Coram: Aburili Judge

CC- Kavata

Mr. Mamburi holding brief for Mr. Kinyanjui

Miss Aduol holding brief for Mr.Okundi for the Respondent.

**Court:** Ruling delivered in open court as the court was engaged at JTI on 17/2/2015.

**R.E. ABURILI**

**JUDGE**

**18/2/2015**