



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL CASE NO. 920 OF 2013

DESAI SARVIA & PALLAN ADVOCATES.....APPLICANT

VERSUS

TAUSI ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. Before me is a chamber summons dated 24th April, 2014 essentially seeking that the Applicant's bill of costs dated 17th September, 2013 and taxed at KShs. 120,043/= be referred back to the taxing officer F.R. Wangila (D.R.) for re-calculation and taxation there being an obvious error in calculating the difference between the amount claimed and the amount taxed off resulting in a wrong taxed total.
2. The summons is premised on the grounds that the taxing officer erred in calculating the final award. That the sub-total after item No. 68 claimed was KShs. 96,480/= and the amount taxed off was KShs. 6,280/= as per her ruling of 8th April, 2014 therefore the final total due and payable should be KShs. 153,753/= and not KShs. 120,043/= as stated in the ruling.
3. The summons is opposed by the replying affidavit of Win Wambui Kihumba sworn on 22nd October, 2014. She contended that this application was not filed timeously as required under Rule 11 of the Advocates (Remuneration) Order and that the Applicant has not proved that it received a response to their notice of objection.
4. In response to the replying affidavit, the Applicant filed a supplemental affidavit sworn by Anuj Desai on 23rd October, 2014. He tried to explain away the delay in filing the summons by stating that the ruling was obtained on 22nd April, 2014 and that the Applicant received no notification from the registry as required rather it was obtained by the Applicant's effort.
5. The application was disposed of by way of written submissions. It was the Respondent's submission that the taxing officer's ruling was well reasoned and no further reasons were required by the parties before filing the reference. The Respondent relied on **Postal Corporation of Kenya v. Donald Kikorir & 3 others (2005) eKLR** in which Waweru J., quoted with approval **Machira & Co. Advocates v. Arthur K. Magugu & Another, Nairobi HCCC No. 358 of 2001** (UR), **Mburu Thuku v. Muthanga Thuku, Nyeri HC. Misc. Application No 87 of 2004** where the need to comply with the provisions of Rule 11 with regard to lodging objection were emphasized. Judge Waweru in the same case quoted **Kobil Petroleum Ltd v. Almost Magic Merchant Ltd., Nairobi HCCC No. 1970 of 2000** where Ringera J., (as he then was) was of the view that further reasons need not be sought or supplied where a taxing officer has given a reasoned ruling on taxation and that a reference to the High Court can be lodged upon such ruling. It was the Respondent's submission that in since the taxing officer's ruling was well reasoned, the Applicant ought to have timeously filed this reference.

6. I have read the depositions of the Applicant and the Respondent, the submission on record and the applicable law. It is evident that the only issue in contention is the delay in filing this reference. The provisions as to the time for filing of a reference are found in Rule 11 of the Advocates Remuneration Order. It stipulates as follows:-

“(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 to the grounds of his objection.*”(Emphasis own)**

7. My understanding of the above provision is that in the event an objection is placed before a taxing officer, the time limit within which a reference should be filed is twenty eight (28) days i.e. fourteen days within which to object and request for reasons plus fourteen days within which a response should be given to the objector. In this circumstance, the Respondent holds the opinion that there was no need for reasons since the ruling was well reasoned. The Applicant on the other hand state that the ruling was obtained on 22nd April, 2014. The Applicant has placed evidence to the effect that the ruling was obtained on 22nd April, 2014 and that it was two (2) days late in filing this reference considering that the ruling was delivered on 8th April, 2014. It is therefore for this court to determine the implications of such delay. In this regard I associate myself with the sentiments of Gikonyo J, in **Utalii Transport Company Limited & 3 Others v. NIC Bank Limited & Another [2014] eKLR** where he stated as follows:-

“Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable. On applying court’s mind on the delay, caution is advised for courts not to take the word ‘inordinate’ in its dictionary meaning, but in the sense of excessive as compared to normality.”

Considering the depositions above, it is worth appreciating that the Applicant obtained the ruling late and that the Respondent has not demonstrated how two (2) days delay will prejudice it. The delay is in my view excusable. In the circumstances I find merit in the application and make the following orders:-

- a. The ruling of the Taxing Officer dated 8th April, 2014 be and is hereby set aside.
- b. The bill of costs be re-taxed before the same Deputy Registrar.

Dated, Signed and Delivered in open court this 13th day of February, 2015.

J. K. SERGON

JUDGE

In the presence of:

Sarvia for the Applicant

Miss. Kihumba for the Respondent

