

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. APPLICATION 21 OF 2014

K.OPOT & COMPANY ADVOCATES.....APPLICANT

VERSUS

WALTER EDWIN OMONDE.....RESPONDENT

RULING

This is a Ruling on the **Notice of Motion** dated 29th October, 2014 in which it is sought that the taxation proceedings and the certificate of taxation in this matter be set aside and the bill of costs be remitted to the Taxing Officer for taxation. The application was filed in response to a Notice of Motion filed by **K`Opot & Company Advocates** which sought judgment for taxed costs in the sum of ksh. 343,101/09.

The gist of present application is that the Advocate/Client Bill of costs was taxed without the Notice of the Applicant.

The application is vehemently opposed and this court heard arguments from the advocates for both sides on 10/11/2014.

I have considered all the material placed before me. **Section 51(2)** of the Advocates Act empowers this court to set aside or alter a certificate of taxation. However and as always the discretion of this court must be exercised judiciously.

Rule 13 of the **Advocates Remuneration Order** lays down the procedure for the taxation of costs as between an Advocate and Client on application of either party. **Rule 13(2)** provides for due Notice of the date fixed for taxation to both parties where an advocate has been given an opportunity to submit an itemized bill of costs where the clients ` bill is rendered in summarized or block form. **Rule 13(3)** then provides that where the bill of costs is otherwise drawn **Notice of Taxation** may issue. In my understanding where the client applies for taxation of a bill which has been rendered in summarized or block form, the taxing officer must give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation and must give due Notice of the date fixed for such taxation to both parties. Where the bill is otherwise drawn, as in this case, notice may issue meaning that notice is not mandatory. **Rule 72** of the Remuneration order is even more elaborate. It requires that service of the notice of the date and time of the taxation be served on all the parties by the registrar but where a party has not appeared he shall not be entitled to such Notice (**Rule 73(1)**)

A reading of these rules shows that notice of the taxation should be given by the court and as we have seen under Rule 13(3) notice is not always mandatory. This must however, be weighed against the right not to be condemned unheard and a practice has evolved where a party or advocate filing the bill of costs gives notice of the date of taxation to the other party or client. That practice has served the purpose. The applicant alleges that he was never served with the Notice of Taxation. He does not however, dispute that he works at Milimani Resort. His only argument is that Milimani Resort and himself are two distinct persons. It would not matter how he was served if he admitted having been served with the bill of costs because under **Rule 73** he would not be entitled to a Notice of taxation. He does however, deny having been served with the bill of costs and we must give him the benefit of doubt. That would not however, not in itself entitle him to the orders he seeks because once taxed the proper procedure would have been for him to ask the taxing officer to give reasons on the items he disputes. Alternatively he should have

opposed the Notice of Motion by the Advocate for judgment on the taxed costs. This Notice of Motion filed by himself is to say the least misconceived. Nevertheless I have perused the bill of costs and considered the proceedings before the taxing officer and found that he acted on the wrong principle of law and the certificate of costs must be set aside. From the proceedings when Mr. Kopot appeared before the taxing officer, he submitted that the bill of costs was drawn in terms of **Sub-paragraph (a) of schedule 7** and that the taxation being one for an Advocate/client`s costs, the sum was to be increased by one half in terms of **paragraph (b) of Schedule 7** with due respect. That was a misdirection. In the first place what was before the taxing officer was a **Client/Advocate Bill** of costs and not a **party and party** bill of costs which is increased by one half in order to get the Advocate/Client`s costs. Moreover, the bill was clearly not drawn under **Schedule VII** as submitted. The said schedule relates to the costs in the Subordinate court and does not provide for drawing, perusals, letter and copies as does **schedule VI**. My finding is even fortified by the manner in which item 4 of the bill is drawn. It asks for a **“sum of ksh. 4,705 for drawing a chamber summons under Order 1 rule 10 of the civil Procedure Rule an affidavit in support of the same plus instruction fee thereof”** Under paragraph 4 of schedule vii a party would only be entitled to **ksh. 1,400/-** for all that. If indeed the bill of costs was drawn under schedule vii items were allowed that are not provided for. If it was drawn under schedule vi there was no necessity for the increase by one half the bill itself having been drawn and presented as an Advocate/ Client bill of costs. Accordingly and so as to save the parties time and further costs, the certificate of costs herein is set aside and the matter remitted back for taxation by any taxing officer. Each party shall bear its own costs. It is so ordered.

E.N. MAINA

JUDGE

Dated, signed and delivered at Kisumu this 26th day of March, 2015

In the presence of:-

.....for the Applicant

..... for the Respondent

Moses Okumu- Court Assistant