



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. CIVIL CAUSE NO. 238 OF 2013**

**IN THE MATTER OF TAXATION OF ADVOCATE – CLIENT BILL OF COSTS**

**BETWEEN**

**OTIENO, RAGOT & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**KENINDIA ASSURANCE COMPANY LTD. .... RESPONDENT**

**Arising From**

**Nyando SRMCC NO. 181 OF 2005**

**JOSEPH OGINGA ..... PLAINTIFF**

**VERSUS**

**CHEMELIL SUGAR COMPANY LIMITED ..... DEFENDANT**

**RULING**

This is a ruling on the Advocate/Applicant's reference by way of Chamber Summons dated 11th August 2014. By that reference the Advocate/Applicant seeks to quash the taxing officer's decision on items 5 and 10 and the item on interest in the Bill of Costs dated 7th October 2013.

The application was vehemently opposed principally on the ground that the same was filed out of time without leave.

Both Advocates duly filed their submissions which I have now had ample opportunity to peruse. I must agree with the Advocate for the Client/Respondent that this reference is incompetent. Rule 11(1) of the Advocates Remuneration Order gives a party aggrieved by the decision of the taxing officer 14 days within which to file a

Notice of Objection in writing. Rule 11(2) requires the taxing officer to furnish those reasons forthwith and once the aggrieved party receives them they have fourteen days to file a reference.

In this case the decision of the taxing officer was delivered on 26th June 2014. On 3rd July 2014 the Advocate/Applicant filed a Notice of Objection in writing and on 10th July 2014 the taxing officer replied

stating that the reasons were contained in the ruling and they are. However it was not until 5th September 2014 that this reference was filed. This was way beyond the 14 days provided in paragraph 11(2) yet leave to enlarge time was not sought. I do not agree that this is a technicality that can be wished away under Article 159(2)(d) of the Constitution and accordingly this reference is dismissed with costs to the Client/Respondent.

**Signed, dated and delivered at Kisumu this 24th day of September 2015**

**E. N. MAINA**

**JUDGE**

In presence of:-

Mr. Ragot for the Applicant

Miss Aron for the Respondent

CC: Moses Okumu