



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SEPARATION AND MAINTENANCE CAUSE NO.37 OF 2012

IN THE MATTER OF THE ADVOCATES ACT

AND

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER

AND

IN THE MATTER PARTY AND PARTY BILL OF COSTS

E W M PETITIONER

-VS-

DR. P M RESPONDENT

RULING

1. The application for consideration is the Notice of Motion dated 10th April 2015. The application is brought under the Advocates Act and Advocates Remuneration Order, Rule 2, 11(4) and (5), Section 1A, 1B and 3A of the Civil Procedure Act Cap 21.
 - i. That the ruling and order delivered by the Deputy Registrar on 13th March 2015 be varied or set aside.
 - ii. That the honorable court be pleased to tax the bill of costs dated 11th July 2013 a fresh and/or make directions as to fresh taxation before a different taxing master.
 - iii. That cost of this reference be provided for.
2. The application is based on grounds that; the learned Taxing Master erred in law and in fact for not assigning specific or sufficient reasons for enhancing the instruction fees from the basics of Kshs. 25,200/- to Kshs. 500,000/-. That the learned Taxing Master erred in principle while enhancing the instruction fees in failing to take into consideration the fact that the suit giving rise to taxation was a case of separation and maintenance and disposed off on a technicality. That the bill of cost was taxed is manifestly high for a case of separation and maintenance.
3. The application was supported by the sworn affidavit of E M. She avers that the Bill of costs proceeded by way of written submissions whose ruling was delivered on 13th March 2015 where the Taxing Master allowed the bill to be taxed at Kshs. 500,000/-. In so doing the Taxing Master erred in principle by enhancing the instruction fees from basic of Kshs. 25,200/- to Kshs. 500,000/- and also for failing to take into consideration the fact that the suit giving rise to taxation

was a case of separation and maintenance and also for failing to give sufficient reasons on the manner he taxed the bill that was manifestly high for a case of separation and maintenance. On the foregoing she avers that the same are sufficient grounds to warrant the Honorable Court to interfere with the decision of the Taxing Master and it would be in the interest of justice and fairness that the same is allowed.

4. The respondent in opposition to the said application filed his replying affidavit on 27th May 2015. He avers that the application was fatally defective and put the applicant on notice that he would be filing a preliminary objection to that effect. He avers that the Taxing Master has the discretion to increase the basic instructions fees as the said fees were not only for separation and for custody but also for division of matrimonial property and that the taxing master was justified to tax the bill as she did.
5. When the matter came up for hearing 18th June 2015. The applicant alleges that the Deputy Registrar did not notify them of the ruling and the same was given in her absence. The following day she wrote to the Deputy Registrar objecting to the taxation seeking tabulations and reasons for the same. She argues that the Court has jurisdiction under the Advocates Remuneration Order under 11(1) (4) to enlarge the time of filing reference. She stated the minimum payable as Kshs. 25,000/- yet the Deputy Registrar gave Kshs. 500,000/- and the matter did not go to full hearing as the same was dismissed on technicality raised by the counsel that the parties were still living together. She argues that the Deputy Registrar's ruling should be set aside so that the court can assess the fees afresh or refer the matter for re-taxation. She relied on the case of **Grace N. Karanja –vs- Simon Karanja** and the case of **Nyagai Wanjau**, which states the steps to be taken in filing a reference.
6. The respondent on their part relied on replying affidavit dated 6/5/15 stated that the applicant had omitted to state that they got to know of the ruling from them and state that the applicant's arguments that she did not receive any reasons is from the bar. They argue that the prayers sought in the application are not in line with the arguments they are raising. He argues that the certificate of taxation is not even before the court and the 2nd prayer has nothing to do with enlargement of time. That it is a requirement that before filing the same a notice must be served on the Deputy Registrar within 14 days of the Tax Master's decision. Further that there is no such letter to the Deputy Registrar seeking the reasons attached. That the application filed is not a reference and was filed out of time adding that the court has been approached indirectly without following the laid down steps and as such the jurisdiction of the court has not been properly invoked. The respondent sought a dismissal of the application with costs.
7. The application before this court in essence is for setting aside orders of 13th March 2015 issued by the Deputy Registrar and seeking a fresh taxation of the bill of costs dated 11th July 2013 or fresh taxation before a different taxing master. In the case of **MACHARIA AND CO. ADVOCATES –VS- MAGUGU [2002] 2EA 428**, the court held that, **“the taxation of costs is the responsibility of the taxing officer whose decision is subject to challenge only within the terms of the Advocates Act (Cap16).”**

Rule 11 (1) of the of the Advocates Remuneration Order provides that, **“(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 out the grounds of his objection”

The applicant admits that they were not able to file an objection within the 14 days and have during the hearing of this application and it is only after such realization that he sought leave from the court to be allowed to file reference out of time. The applicant argues that they only learnt of the

ruling on 1st April 2015 when the respondent extracted and sought to execute the said taxation.

Rule 11(4) of the Advocates Remuneration Order provides that, *“The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (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 expired.”*

Going as per the above provisions the High court has discretion to enlarge time for a party to file a reference beyond the 14 days. However, a party seeking to make such an application is required to give at least a 3 days’ notice in writing. There is also the first step that the applicant has to give notice to the Deputy Registrar as provided under rule11 (1) which was not done in this case. Other than the current application and a letter dated 13th April 2015 to the Deputy Registrar seeking to procure the said file no notice was filed and served on the by the applicant as required. I also find that the orders the applicant seeks are should be raised in a reference which as it stands now is yet to be filed as the applicant in their oral submissions in court is seeking leave to file the reference after the fact. As such I find that the said application lacks merit and dismiss the same. No orders as to costs. It is so ordered.

Dated, signed, and delivered this 28th day of October,2015.

R. E. OUGO

JUDGE

In the presence of:

.....**For the Applicant**

.....**For the Respondent**

Ms. Charity

Court Clerk