



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISCELLENOUS APPLICATION NO. 3 OF 2015

ONESMUSLANGAT & CO.ADVOCATES....APPLICANT/RESPONDENT

VERSUS.

COUNTY GOVERNMENT OF KERICHO.....RESPONDENT/APPLICANT

RULING.

This Ruling is in respect of the Notice of Motion dated 18th July 2015 where the Applicant seeks the following orders:

- i. *THAT this Honourable Court be pleased to stay execution of the Bill of costs taxed at Kshs.3,120,709.70 on 17th February, 2015, pending the hearing and determination of this Application;*
- ii. *THAT this Honourable Court be pleased to strike out the Certificate of taxation dated 26th February, 2015;*
- iii. *THAT this Honourable Court be pleased to Order that the Respondent is not entitled to any costs for services he allegedly offered to the Applicant when he was not qualified to practice law and when he was an employee of the Applicant; and*
- iv. *THAT costs of the Application be provided for.*

The main ground is that the Respondent offered legal services when he was not qualified to practice law. And following the offering of services he filed a Bill of Costs which was taxed at Shs.3,120,709/70.

The application is supported by the supporting affidavit of Joel K. Bett the County Secretary of the Respondent/Applicant. Several documents have been annexed to support its case.

The application has been opposed by the Applicant/Respondent who filed a Replying Affidavit and the following grounds of opposition filed on 17/9/15.

- i. *The application is incompetent, misconceived, bad in law and a waste of precious judicial time and resources as the same is based on a mis comprehension of the legal regime for challenging the taxation of bills of costs.*
- ii. *Leave has not been sought and obtained by the applicant to challenge the decision of the taxing master after the lapse of the stipulated 14 days.*

- iii. *There is no excusable reason that has been given by the applicant as to why it took 5 months to challenge the decision of the Deputy Registrar.*
- iv. *The applicant has not laid sufficient basis on which the court can interfere with the decision of the taxing master.*
- v. *The Taxing master's decision was true and legally sound and that he properly directed himself and used correct principles.*
- vi. *The Applicant has not approached this Court with clean hands as it refused and/or neglected to participate in this Court's processes despite being served with notice of taxation together with bill of costs and a letter together with a reminder forwarding the certificate of costs and only reacted when the Respondent sought to execute.*
- vii. *The application is just a ploy to delay and or deny the respondent its rightful reward for services rendered.*

Both counsel appeared before me and argued the application. They mainly substantiated on their grounds in support of or against the application.

I have considered all the submissions, affidavits and annexures.

From the prayers sought in the Notice of Motion it is clear that the Respondent/Applicant is challenging the orders of Taxation by the Deputy Registrar, together with the Certificate of Costs.

Taxation is provided for under the Advocates Remuneration Order, which at paragraph 11 provides;

- i. *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.*
- ii. *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.*
- iii. *Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.*
- iv. *The High Court shall have power in its discretion by order to enlarge the time fixed for 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.*

Paragraph 7 above clearly sets out the procedure of objecting to the decision of a Taxing Officer.

It does not matter whether for any reason a party feels and/or thinks there is no decision by such an Officer.

As far as the record stands there is a decision which taxed the costs at Shs.3,120,709/70.

That remains the decision until the Court is properly moved to have it set aside.

The advocates Remuneration Order being so clear on the process of challenging a Taxing Officer's decision, there is no room for a party to apply the Civil Procedure Act & Rules to this. Its a waste of time

and causes unnecessary delays.

I therefore find the present application to be incompetent and I strike it out with costs to the Applicant/Respondent.

Dated, Signed in open Court this 21st day of December, 2015.

H.I. ONG'UDI

JUDGE.