



IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 678 OF 2012

DANIEL KARURU MWAURA.

T/A KARURU MWAURA & COMPANY ADVOCATES. ... APPLICANT

VERSUS

JOHN MWANGI KANYI.RESPONDENT

RULING

This is an application by Chamber Summons by the Respondent/Judgment Debtor. The application is undated although apparently filed in court on 10th October, 2013. It seeks the setting aside of the Taxing Officer's ruling of taxation in this case, dated 21st November, 2012.

The grounds upon which the said ruling is to be set aside is in summary, that the taxing officer exercised his discretion wrongly by failing to take into account relevant or proper facts or failing to consider submission filed by the party to support the opposition to the figure sought in the Bill of Costs before him and that there were no valid grounds in enhancing the figures which had been claimed after allowing them during taxation. The application/appeal to the judge in chambers above, were brought under Rule 11(2) of the Advocates Remuneration Order.

The application/Appeal was opposed by the Decree-holder applicant before the Taxing Officer. The Decree Holder objected to this reference to the judge of the Taxing Officers ruling on two grounds: - That the reference was out of time and leave to make reference to the Judge in Chambers should first have been obtained. And secondly, that even if the reference were on time, it has no merit and should on either or both grounds be dismissed or struck out.

The facts on record show that the Taxing Officer's ruling was delivered on 22nd May 2013 in the presence of both parties. The Judgment Debtor appears to have objected to the taxation on 5th June, 2013 and sought grounds of ruling which made the Taxing Officer write to the latter a letter dated 21st June, 2013 informing him that the reasons of his taxation ruling are in the ruling which each party had timeously been supplied with on the ruling date. The problem in this matter appears to have started then since the Judgment Debtors Advocate denies receiving the letter whose copy had been duly received by the Decree-holders counsel. On 26th August, 2013 the Decree Holder's advocate wrote to the Judgment Debtor threatening execution. That, for the first time, invoked the Judgment Debtor advocates reaction in his letter dated 30th August, 2013 wherein he stated that he had never been furnished with the Taxing Officer's reasons for the taxation. This letter he never delivered to the Taxing Officer until 19th September, 2013.

Two issues require to be addressed in this application. The first is whether or not this application was timeously filed and whether it is competent in any case. If it was competent, the second issue is whether it has merits which would persuade this court to interfere with the Taxation ruling of the Taxing Officer dated 22nd May, 2013.

I have perused the file record and considered the material, upon which this application is based, while taking into account the submissions from both counsel. I will first tackle the meritorious grounds of the application.

The applicant/Objector of the Taxing officer's taxation, stated in the application that the Taxing Officers allowing of an item of Ksh.80,000/- and also of enhancing it by 1/3, was illegal and had no factual basis. In his arguments before this court when this application was prosecuted, counsel said little to justify that allegation. The counsel concentrated only on justifying the competence of the application which he said was timeously filed in October, 10th 2013.

It is the view of this court accordingly, that the applicant/Objector failed to demonstrate before this court that the Taxation ruling was so wrong or so unfair or so unjustified that it ought to be interfered with by the Judge in Chambers. The law and practice as I understand it, is the one cited in the case of **PREHCHAND RAICHAND LIMITED & ANOTHER VS QUARRY SERVICES OF EAST AFRICA LIMITED AND ANOTHER [1992] EA 162** where the Court of Appeal stated as follows: -

“Taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award is somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other.”

A similar view was expressed by Ringera, J of this court in **FIRST AMERICAN BANK OF KENYA VS SHAH AND OTHERS [2002] EALR**, 64 at 69 thus:-

“First, I find that on the authorities, this court cannot interfere with the Taxing Officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle.”

As earlier indicated, the objector herein did not follow up on the grounds of his application to argue and justify them. He accordingly totally failed to demonstrate that the Taxing Officers decision or award complained of, was based on any erroneous principle or that the award was so manifestly excessive as to justify an inference that it was based on an error of principle. In the circumstances, this application clearly shows no merit and should fail.

In the alternative, this court finds that the application was filed out of the prescribed period without the leave of court. It was a fact not disputed that the Taxing Master served the parties with a hard copy of the ruling containing reasons for his taxation ruling at the time the ruling was delivered in chambers in their presence. It was accordingly, in the court's view unnecessary for the Judgment/Debtor-Objector to require the Taxing Officer to give same reasons afresh. Even further, when the Taxing Officer by his letter of 21st June, 2013, nevertheless, gave such reasons by writing so to the Objector, the alleged failure to receive the letter by the Objector did not change the fact that the reasons for taxation had been given. It is otherwise on record that the decree-holder received his copy of the letter.

If later, the Objector found that the Taxing Officer had given those reasons in a letter he had not allegedly received, then the correct conclusion should have been that the reasons were actually given, which led the Objector to be out of time to file a reference to the Judge in Chambers. He would then be under obligation to file an application for leave to file the reference out of time, relying on the fact that he did not himself receive those grounds contained in the Taxing Officer's letter which he did not receive. Such would have been a good ground to oblige the court to enlarge the time to make the reference.

The Objector argued that he assumed that until he personally received the cited letter, time did not run although the other party received his copy. In the court's view such an assumption, was wrong. Furthermore, the court's view is that the Objector all along, knew of the existence of the said Taxing Officer's letter of 26th June, 2013 but wanted to delay the execution of the certificate of taxation and the decree, if any existed then. Indeed, there is evidence on record to the effect, that even after being informed of the coming execution, he took three weeks to deliver his letter to court and the other party.

The conclusion the court has reached on the second issue, therefore, is that this application was filed out of time and without leave of court. It is therefore incompetent and requires to be struck out.

For either reasons or both, this application is hereby dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 23rd day of September, 2014.

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JUDGE