

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO 473 OF 2013

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA

MWANGI KENG'ARA & CO, ADVOCATES.....ADVOCATE

VERSUS

INVESCO ASSURANCE COMPANY LTD.....CLIENT

R U L I N G

1. On 2nd May 2013 the Advocate herein filed his advocate/client bill of costs dated 30th April 2013 in respect to **Nairobi RMCC No 8000 of 2004** where he had acted for the Client's insured. When the bill came up for taxation the Client raised objection to it upon the main ground that the primary suit before the lower court was not yet completed and that the Advocate was still on record there for the defendants, and that therefore the bill of costs was premature. In a brief ruling dated and delivered on 24th October 2013 the taxing officer upheld the preliminary objection. She said -

“I note that the Applicant herein is still on record in the parent suit. He cannot file an advocate/client bill of costs against his client. It is on that point only that I will order that the Applicant herein regularizes representation in the parent file before he files a bill of costs against his client. This bill of costs is stayed until then.”

2. The learned taxing officer based her decision upon **Order 9, rule 13(1)** of the **Civil Procedure Rules, 2010**. The said rule 13 makes provision for withdrawal of an advocate who has ceased to act for a party in a cause or matter. The *proviso* to subrule (1) of that rule states that an advocate shall be considered to be the advocate for a party he has been representing to the final conclusion of the cause or matter, including any review or appeal, unless the advocate has obtained an order of leave granted to him by the court to cease so acting, and has served such order on every party to the cause or matter. Subrule (3) of the same rule, however, provides that **any order made under that rule shall not affect the rights of the advocate and the party as between themselves**.

3. The Advocate has challenged the aforesaid order of the taxing officer by **chamber summons dated 18th December 2013**. That application is the subject of this ruling. The application has been opposed by the Client by replying affidavit filed on 4th June 2014. That replying affidavit is sworn by one **Joshua Orangi**, the Claims Manager of the Client.

4. The application was canvassed by way of written submissions which I have considered, including the many cases cited. The Advocate's submissions were filed on 12th June 2013 while those of the Client were filed on 25th June 2014. These submissions came up for highlighting on 23rd July 2014.

5. It is trite law that the **Advocates (Remuneration) Order** is a complete body of laws in its own right which does not admit application of ordinary civil procedure rules to taxation matters. By invoking Order 9, rule 13(1) of the Civil Procedure Rules, 2010 the taxing officer fundamentally erred in law. She also failed to notice subrule (3) of the same rule 13 which saves the rights of an advocate and his client as between themselves notwithstanding any order made under that rule. Surely, such rights must include the right of an advocate to tax his bill of costs against his client?

6. In any event, it is now common ground that the primary suit was concluded by the passing of judgment and issuance of decree on 21st July 2010. This point was conceded by the Client's advocate at the time of highlighting the submissions. It means therefore that the submissions on behalf of the Client before the taxing officer to the effect that the primary suit was still pending unconcluded was incorrect and misleading. Not that it should matter anyway even if the primary suit was still pending, in view of subrule (3) of rule 13 already cited!

7. I therefore have no hesitation at all in setting aside the order of the taxing officer of 24th October 2013. I direct that the Advocate's bill of costs dated 30th April and filed on 2nd May 2013 be taxed in the usual way. The Advocate shall have costs of this application. Those will be the orders of the court

DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF OCTOBER 2014

H P G WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2014