



**REPUBLIC OF KENYA**

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

**CIVIL MISC. APPLICATION NO.493 OF 2013**

**MWANGI KENG'ARA & COMPANY ADVOCATES...ADVOCATE/APPLICANT**

**VERSUS**

**INVESCO ASSURANCE COMPANY LIMITED.....CLIENT/RESPONDENT**

**RULING**

The application for this courts consideration is the Chamber summons dated 1<sup>st</sup> November 2013 brought under Rule 11 (2) of the Advocates (Remuneration) Order, seeking for the orders that the decision of the taxing officer herein dated 15<sup>th</sup> August 2013 be set aside in its entirety and the Bill of Costs dated 6<sup>th</sup> May 2013 be remitted back to any other taxing officer for taxation .The applicant also seeks costs to this application.

This application is premised on the grounds stated on the face of the application which are that; the decision of the taxing officer is bad in law and in principle in so far as it failed to take into account the Bill of Costs filed on 8<sup>th</sup> May 2013 whereas the client paid the billed fees on 28<sup>th</sup> May 2013 and as such, the Advocate had a valid cause of action when the Bill of costs was lodged. That the taxing master failed to take into account that there was a dispute between the advocate and the client on the fees due to the advocate as at the time of filling the Bill of Costs. That the decision is bad in law and in principle in so far as it denied the advocate a chance to have the Bill of Costs filed taxed to determine the rightful fees for the advocate. That the award of Kshs. 20,000/=awarded by the taxing master was without basis in law and contrary to the express provisions of the Advocates Act.

The application was further supported by the supporting affidavit of Mercy Nduta Mwangi an advocate who was acting for the Respondents in this matter. She stated that she caused a fee note No 502 for the services rendered to the Respondent 's insured in *Milimani CMCC No. 6832 of 2005 Samson Mwangangi Nzioki –vs- Catering & Tourism Development* to be delivered to the client .That the Respondent upon receiving the fee note responded by asking her to submit a revised fee note under Schedule VII but she declined to revise the fee note. That the Respondent failed to settle her fee note within 30 days and on 8<sup>th</sup> May 2013 she filed her bill of costs. That after serving the Bill of Costs to the Respondent via courier services, she received payment of Kshs 81,717/= sent to her office on 28<sup>th</sup> May 2013 a day after it declined to receive the bill of costs. She believes that at the time of filling her bill of costs there was a dispute on her legal fees and the client had not paid the billed fees therefore she had a valid and genuine claim against the client. She believes that the taxing officer failed to take all factors that were brought before her into consideration leading to the unjust decision.

In opposing this application the Respondent through Paul Gichuhi the legal manager stated that the applicant raised and sent a fee note requesting for a sum of Kshs 81,717.20/= as the final legal fees to be paid in the matter which she had represented the Respondent .The Respondent replied by asking the applicant to revise her fee note with regards to the instruction fees and that the same be billed under schedule VII instead of schedule V. However the Applicant failed to review her fee note but in good faith the Respondent decided to settle the claim by forwarding the applicant a cheque for the whole sum of Kshs 81,717/=and as such the taxing master was right in law to find that the applicant's claim had been settled on the basis of this payment which the applicant grossly ignored to reflect in her bill of costs. That the applicant's fee note as raised was final and not interim and therefore the same, upon being settled, automatically brought the matter to finality. He also added that the taxing master was within the law in awarding the Kshs 20,000/=to the respondent as the amount was quite a fair reimbursement, taking into

account the costs incurred by the Respondent in this matter as the same were within the reasonable limits and manifestly adequate. He therefore sought this court to dismiss the reference as it was misconceived, bad in law and an abuse of the court process intended to subject the respondent to double jeopardy.

I have considered the application, the affidavits on record as well as the submissions by Counsel. Having done so, I take the following view of the matter. The sequence of events is that the applicant sent her fee note to the Respondent for a sum of Kshs 81,717.20/= on 4th April 2013 and she expressly indicated that the fee should be settled within 30 days. However the Respondent could not agree with the applicant on the fee note raised and asked her to revise her fee note. She however did not revise her fee note and in a letter dated 16th April 2013 she replied that the fee was properly drawn to scale. She later filed her bill of costs on 8th May 2013. It is noted that the Respondent vide its cheque No 005594 dated 11th May 2013 paid the applicant Kshs 81,717/=. This is the amount the applicant had sought for in her fee note. **Section 48(1) of the Advocates Act** states that, *“Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarised form, signed by the advocate or a partner from his firm has been delivered or sent by registered post to the client.....”*. It is not disputed that the bill of costs was filed 30 days after the fee note had been sent and the applicant’s fee had not been settled. There is also a letter from the Respondent to the applicant asking her to revise her fees which to my opinion pointed out to a dispute between the parties herein. The Respondent sent its cheque to the applicant after receiving the bill of costs. This court finds that since the cheque was sent after the bill had been filed, the bill should be taxed on its merit by the taxing officer and the amount sent by the Respondent credited as paid to the applicant. I allow the chamber summons dated 1<sup>st</sup> November 2013 and set aside the taxing master’s decision in its entirety and the Bill of Cost dated 6<sup>th</sup> May 2013 be remitted back to any other taxing officer for taxation. Costs to the applicant.

Orders accordingly

Dated, signed and delivered this 31<sup>st</sup> Day of October 2014.

**R.E. OUGO**

**JUDGE**

In the Presence of:-

..... For the Applicant

.....For the Respondent

.....Court Clerk