



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL SUIT NO.291 OF 2006**  
**IN THE MATTER OF ADVOCATE/CLIENT BILL OF COSTS**  
**BETWEEN**  
**P.M. MALONZA t/a MALONZA &CO. ADVOCATES.....ADVOCATE/RESPONDENT**  
**VERSUS**  
**THE BOARD OF DIRECTORS KENYATTA NATIONAL HOSPITAL...CLIENT/APPLICANT**  
**RULING**

1. Before me is a notice of motion dated 1<sup>st</sup> February, 2013. The client seeks to set aside the certificate of taxation dated 18<sup>th</sup> January, 2013 and all consequential orders and proceedings emanating therefrom.
2. The application is supported by the affidavit of Evalyne Gicheru sworn on 1<sup>st</sup> February, 2013. The grounds are that the advocate was estopped from filing any bill of costs as the advocate and client had agreed upon a fee, after the advocate had sent its fee note, and the same was being processed for final payment, a fact that the advocate withheld or failed to disclose to the taxing master.
3. In its submissions the client referred to the issue of block fee notes and argued that in such fee notes, advocates can only be entitled to such amount upon taxation and not more than the block fee note. He contended that it was not accorded the right to be heard in the taxation and urged that the application be allowed.
4. The advocate opposed the application vide the replying affidavit of Julius Orenge sworn on 27<sup>th</sup> February, 2013. He contended that section 51(2) of the advocates Act and paragraph 11 of the Remuneration Order are not available to the client due to the lapse of mandatory time limit. That it is untrue that the client was never served with the bill of costs. Taxation notices were annexed to that effect. The advocate reiterated its averments and argued that this court has no jurisdiction to set aside the orders of the taxing master.
5. I have considered the rival depositions and submissions. what is before court for determination is:
  - a. Whether or not this application is correctly before this court.
  - b. If (a) above is answered in the affirmative, whether or not the respondent has established good grounds for setting aside the certificate of costs.

6. The provisions as to the time for filing of a reference are found in Rule 11 of the Advocates Remuneration Order. It provides:

***“(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 to the grounds of his objection.”***

7. It is clear from the foregoing that the Applicant ought to have written to the taxing officer requesting for written reasons for his decision before filing this application. No such letter has been exhibited by the Applicant. I hold the same opinion I held in ***Wanga & Company Advocates v. Busia Company Ltd (2004) 1KLR 206*** and as was held in ***Industrial & Commercial Development Corporation v. Otachi (1977) KLR 101***. In the circumstances I find and hold that this application is premature and this court has no jurisdiction to entertain it. It is accordingly struck out. Costs shall be in the cause.

Dated, Signed and Delivered in open court this 18<sup>th</sup> day of December, 2014.

**J. K. SERGON**

**JUDGE**

In the presence of:

.....**for the Client/ Applicant**

.....**for the Advocate/Respondent**