



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC. APP. NO 50 OF 2012

OMULELE & COMPANY ADVOCATES.....ADVOCATE

VERSUS

SYNRESINS LIMITED.....CLIENT

RULING

1. In this application by **notice of motion dated 1st February 2013**, the Client seeks leave of the court to appeal against the judgment entered for the Advocate on 14th December 2012 (Ang'awa, J). That judgment was for taxed costs and was entered under **section 51(2)** of the **Advocates Act, Cap 16**. The application for judgment by notice of motion dated 19th September 2012 was opposed and was canvassed *inter partes*.
2. The Advocate's costs had been taxed on 3rd August 2012 upon an advocate/client bill of costs dated 26th January 2012. Both parties, duly represented by counsel, had appeared before the taxing officer on 9th March 2012 when the bill of costs was fixed for taxation on 23rd March 2012. On that date there was no appearance for the Client, and the Advocate presented his bill *ex parte*. Ruling on taxation was reserved for 25th April 2012; it was eventually delivered on 3rd August 2012.
3. No challenge to the taxation was lodged under **paragraph 11** of the **Advocates (Remuneration) Order**. The Advocate then sought judgment.
4. There does not appear to be an automatic right of appeal against a judgment for taxed costs entered under section 51(2) of Cap 16, and hence the present application.
5. The Advocate has opposed the application by grounds of opposition dated 11th April 2013. The point is taken, *inter alia*, that in effect, since the taxation was not challenged, it would not be just to allow the Client to appeal against a judgment entered upon an unchallenged certificate of taxation. No replying affidavit was filed.
6. I have read the two affidavits sworn in support of the application. They merely give the background to the present application. I have also considered the submissions of the learned counsels appearing.
7. Indeed, the taxation has not been challenged under paragraph 11 of the Advocates (Remuneration) Order. Section 51(2) of Cap 16 under which the judgment now sought to be appealed against was entered provides as follows –

“51. (2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

8. In the supporting affidavits the Client has raised the issue, *inter alia*, that there was a fee agreement between it and the Advocate which should be enforced, and that therefore there should not have been any taxation in the first place. That is an issue that could only properly have been taken up at the taxation stage. The taxing officer would then have adjourned the taxation to enable the parties to canvass the issue in other appropriate proceedings. Ang’awa, J similarly ruled when the issue was raised when the learned Judge was hearing the application for judgment.

9. The question therefore that begs itself is this: as long as the taxation remains unchallenged as provided for under the law (paragraph 11 of the Advocates (Remuneration) Order), and since judgment was duly entered under section 51(2) of Cap 16 upon the unchallenged certificate of taxation, what purpose would be served by the intended appeal? The certificate of taxation cannot be questioned in such appeal; it can only be challenged under paragraph 11 of the Remuneration Order.

10. I find that the intended appeal would serve no purpose as long as the certificate of taxation upon which the judgment sought to be appealed against was entered remains unchallenged.

11. In the event I will not grant the leave to appeal sought. The application has no merit and is dismissed with costs to the Advocate. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JULY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2013