



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO.145 OF 2013**

**DALMAS OKACH RANDA .....APPLICANT/DEFENDANT**

**VERSUS**

**PETER LOLWE OMBO.....RESPONDENT/PLAINTIFF**

**J U D G E M E N T**

The plaintiff/respondent was the successful party in Bondo SRMCC No.167 of 2007 against the defendant/applicant. He filed a bill of costs seeking Kshs.153,943/=. The same was opposed. The learned principal magistrate assessed the bill as drawn. The applicant was aggrieved by the assessment and filed this reference. The grounds on which the reference was based were that:

- a. the assessed costs were excessive and amounting to unjust enrichment; and
- b. the assessment was not in accordance with the Advocates Remuneration Order of 1997 and 2009;

The respondent opposed the reference. His basic contention was that there was no reference properly so called as the assessment was before a subordinate court, and therefore not a taxation within the meaning of rule 11 of the Advocates Remuneration Order 2009; that the learned magistrate was not a taxing officer and therefore the costs awarded by the subordinate court could be the basis for a reference under rule 11; and that what was open to the applicant was to appeal the decision of the learned magistrate on costs. If the court found that it has jurisdiction to entertain the reference, the respondent contended, it should find that the trial court had properly exercised its decision during the assessment.

Under paragraph 10 of the Advocates Remuneration Order 2009

**“10. The taxing officer for the taxation of bills under this Order shall be the registrar of the High Court or, in the absence of the registrar, such other qualified officer as the Chief Justice may in writing appoint, except in respect of bills under Schedule IV the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.”**

Paragraph 11 provides that any party aggrieved by the decision of the taxing officer can within 14 days give notice to the officer of the items of taxation that he objects to. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items. The objector will then have 14 days to apply to a judge in chambers for the consideration of the objection. Any person aggrieved by the decision of the judge, shall, with leave from the judge appeal to the Court of Appeal.

The court is not dealing with a reference from the taxing officer, but an assessment of costs in a matter that was heard and determined by a subordinate court. The motion that filed the “reference” was indicated to be brought under paragraph 11(2) of the Advocates Remuneration Order. I agree with Mr. Odhiambo for the respondent that the Principal Magistrate who assessed the bill was not a taxing officer as defined under Paragraph 10 and therefore there was no jurisdiction to file a reference under paragraph 11(2). If the applicant was aggrieved by the assessment by the trial court he should have gone back on review, or appealed the decision to the High Court.

In other words, and I find that, the reference is incompetent, and is therefore struck out with costs.

**Dated, signed and delivered this 9th day of December, 2013.**

**A. O. MUCHELULE**

**J U D G E**