



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL CASE NO 616 OF 1999**

**PETER AMOLO AKUMU GOULD.....PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL BANK LTD.....DEFENDANT**

**RULING**

1. In a judgment herein dated and delivered on 19<sup>th</sup> June 2009 (Osiero, J) the Plaintiff's suit was dismissed with costs to the Defendant. The Defendant subsequently filed his party/party bill of costs dated 2<sup>nd</sup> July 2009.

2. The bill of costs appears to have been canvassed initially on 5<sup>th</sup> March 2010 before **Hon Ougo** (then a Chief Magistrate and taxing officer, now a Judge of this Court). But on the same date she set aside the submissions made before her. Eventually taxation proceeded before **Hon Samuel M. Wahome**, Principal Deputy Registrar and taxing officer, by way of written submissions.

3. In a ruling dated and delivered on a day and month not indicated of the year 2010, he allowed instruction fee (item 1 of the bill) at KShs 1,000,000/00; item 4 (instruction to oppose an interlocutory application for temporary injunction) at KShs 5,000/00; and item 149 (fee for getting up) at KShs 333,333/00 (one-third of the instruction fee). All the other items were allowed as drawn. The total bill was taxed at KShs 1,331,824/00. The record of the court indicates that the ruling on taxation was to be delivered on 10<sup>th</sup> August 2010.

4. The original hand-written ruling is signed. There are uncertified typed copies of the ruling on the court record. Reasons for the taxing officer's decision on the taxation are contained in the said ruling.

5. The Defendant subsequently filed **chamber summons dated 15<sup>th</sup> September 2011** seeking once main order in the following terms –

“The Defendant's objection to the decision of the Taxing Officer on items 1, 4 and 149 of the Defendant's bill of costs filed on 7<sup>th</sup> July 2009 be heard and decided.”

6. The grounds for the application on the face thereof include the ground that the Taxing Officer has failed to give the reasons for “her” decision on items 1, 4 and 149 of the bill of costs pursuant to **paragraph 11 (2) of the Advocates (Remuneration) Order** despite request to do so. The other grounds attack the actual decision of the taxing officer on the three items mentioned in the bill of costs.

7. The application is supported by an affidavit sworn by the Defendant's advocate, **Kiragu Kimani**. He has deponed, *inter alia* -

- (i) That the ruling on taxation "was delivered on 24<sup>th</sup> September 2010".
- (ii) That by a letter dated 27<sup>th</sup> September 2010 the Defendant gave notice of objection to the taxation on items 1, 4 and 149. A copy of the letter is annexed.
- (iii) That the Taxing Officer has failed to give reasons for her decision despite two reminders (which are annexed).
- (iv) That in the circumstances the Defendant's objection to the decision of the Taxing Officer should be heard and decided.

8. The Plaintiff opposed the application by **replying affidavit** sworn by him on 7<sup>th</sup> and filed on 8<sup>th</sup> February 2012. He has deponed, *inter alia* -

- (i) That the taxation was by written submissions which were "highlighted...before Hon Muiruri, the taxing officer, on 3<sup>rd</sup> May 2010".
- (ii) That his counsels were thereafter unable to get the decision of the taxing officer as the court file was always reported missing.
- (iii) That once he gets the ruling on taxation he will object to the same as the figures awarded are too high.

9. The application was canvassed by way of written submissions. The Defendant's submissions were filed on 14<sup>th</sup> March 2012 while those of the Plaintiff were filed on 17<sup>th</sup> April 2012. I have considered those submissions.

10. In its **notice of objection to taxation** by letter dated 27<sup>th</sup> September 2010 the Defendant states that the ruling on taxation was delivered by "Mrs Gicheha, Principal Deputy Registrar, on 24<sup>th</sup> September 2010". This is wrong on two fronts. Firstly, as already seen, the ruling was prepared and signed by Hon Samuel M Wahome, Principal Deputy Registrar. Secondly, although the ruling does not have the day and month of delivery in the year 2010, the record of the court indicates that it was to be delivered on 10<sup>th</sup> August 2010. That was the date given by Hon Wahome on 9<sup>th</sup> July 2010 when the advocates for both parties appeared before him and sought a date for ruling after pointing out that they had both filed their written submissions. The record does not indicate that the ruling was delivered on a date other than 10<sup>th</sup> August 2010, or by a taxing officer other than Hon Wahome.

11. If the ruling on taxation was delivered on 10<sup>th</sup> August 2010, as it appears it was, then the notice of objection given by the Defendant by letter dated 27<sup>th</sup> September 2010 was clearly out of the time stipulated under paragraph 11 of the Advocates (Remuneration) Order.

12. The Plaintiff is also wrong when he states that the parties highlighted their submissions before Hon Muiruri as taxing officer on 3<sup>rd</sup> May 2010. Indeed the advocates for the parties had appeared before Hon Muiruri on 15<sup>th</sup> March 2010. The matter was by consent fixed for highlighting on 3<sup>rd</sup> May 2010. There is no record of the parties appearing before Hon Muiruri on 3<sup>rd</sup> May 2010; apparently the matter was not listed.

13. The parties' advocates next appeared before Hon Wahome on 9<sup>th</sup> July 2010 as already seen. They pointed out that they had already filed their submissions on the taxation and requested for a date for delivery of ruling. The taxing officer reserved ruling for 10<sup>th</sup> August 2010. Neither the Plaintiff nor the

Defendant has stated if they appeared before the taxing officer on 10<sup>th</sup> August 2010, and if not, why they did not do so.

14. As already stated, I have no reasons to doubt that the ruling on taxation was delivered on 10<sup>th</sup> August 2010 as reserved, notwithstanding that the original handwritten ruling, which is signed by the taxing officer, does not have the day or month of the delivery, only the year. If the parties did not attend the taxing officer on 10<sup>th</sup> August 2010, as they appear not to have done, they should have perused the court record soon thereafter to know what had happened. They appear not to have done so. They then each made their own assumption as to who delivered the ruling on taxation, and when the ruling was delivered.

15. In the circumstances I hold that there is not before the court any proper notice of objection to taxation by either party as the notice given by the Defendant on 27<sup>th</sup> September 2010 was out of time. None was given by the Plaintiff. There is also no proper application in reference against the taxation filed by any party under paragraph 11 of the Advocates (Remuneration) Order.

16. In the event the Defendant's application by chamber summons dated 15<sup>th</sup> September 2011 is dismissed with no order as to costs. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER 2013**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF DECEMBER 2013**