



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

Miscellaneous Application 245 of 2011

IN THE MATTER OF ADVOCATES REMUNERATION (AMENDMENT) ORDER 2006

AND

**IN THE MATTER OF TAXATION OF PARTY AND PARTY BILL OF COSTS ARISING FROM
THE DISMISSAL OF NYAMIRA SPMC'S CIVIL CASE NO. 11 OF 2011**

BETWEEN

JUSTUS AYOTI OMONDI..... APPLICANT

-VERSUS-

NAFTAL RAGIRA ONCHWARI RESPONDENT

RULING

By notice of motion dated 2nd December, 2011, the applicant seeks orders that:-

- a. *The application herein be certified urgent and be heard exparte in the 1st instance.*
- b. *The Hon. Court be pleased to grant an interim order stopping the respondent herein from taking any step in Nyamira SPMC's civil suit no. 11 of 2011 pending the hearing of this application interpartes.*
- c. *That the bill of costs in Nyamira SPMC's court in civil suit no. 11 of 2011 be declared null and void, devoid of procedure, hence an illegality in law.*
- d. *Cost of this application be provided for.*

The application is stated to be based on the grounds reproduced verbatim herein below:-

1. *No service was effected personally to the applicant as required by law.*
2. *Assessment was done without the input of the applicant.*
3. *The applicant is opposed to the assessment items which were grossly exaggerated and awarded erroneously.*

4. *The whole bill of cost is a nullity in law as procedure was not followed, consequently the notice to show cause why execution should not issue coming up on 14th December, 2011 is null and void abinitio, same should be discontinued.*

5. *It will be in the interest of justice to allow this application as it will not prejudice the respondent but to the contrary the applicant will be prejudiced.*

In his supporting affidavit, the applicant avers that he was the plaintiff in Nyamira SPM civil suit no. 11 of 2011 wherein his suit was dismissed. Subsequently the defendant filed a bill for assessment of costs dated 10th June, 2011. The bill was assessed at kshs. 35,225.00. A notice to show cause has now been served on him prompting him to file the present application. His main complaint is that he was not accorded an opportunity to be heard by the taxing master.

The application is opposed by the respondent. In grounds of opposition dated 10th January, 2012, the respondent states that the assessment of costs was done according to the law and the application ought to be dismissed.

Parties canvassed the application by written submissions which I have considered.

The matter before me is one where the applicant seeks to stay execution proceedings arising out of the disputed bill of costs. The procedure for assessment of costs in the lower court and a taxation of bills in the High Court is clear. As correctly submitted by the respondent costs in the lower court are assessed by the magistrate or the executive officer of the court. Any objection ought to be filed within 14 days with the assessing officer who is enjoined to give reasons for his decision or the amounts arrived at.

In the instant case, the applicant has opted not to file his objection. He has also chosen not to answer to the notice to show cause wherein he would raise the issue of lack of service. It is clear to me from the rival affidavits and submissions on record that the applicant has not complied with the procedure set out under Rule 11 (2) of the **Advocates Remuneration Order**. In bringing the instant application the applicant appears to circumvent the established procedure. He has to comply with the procedure in the lower court.

For the above reasons I find no merit in the application and dismiss it with costs.

Ruling dated, signed and delivered at Kisii this 21st day of September, 2012.

R. LAGAT-KORIR
JUDGE

In the presence of:

..... for applicant

..... for respondent

..... court clerk

R. LAGAT-KORIR
JUDGE