



## REPUBLIC OF KENYA

### High Court at Nairobi (Nairobi Law Courts)

#### Succession Cause 272 of 1989

### IN THE MATTER OF THE ESTATE OF LT. COL. KENNETH AMBER NORTH - (DECEASED)

#### RULING

The application before the court is brought by a Chamber Summons dated 25<sup>th</sup> November, 2011 and taken out under paragraph 11(4) of the Advocates Remuneration Order; Section 3A of the Civil Procedure Act, and the inherent powers of the court. Out of the eight (8) prayers sought, four (4) are already spent. The remaining four (4) prayers are for the following orders-

- 1. That the Applicant be supplied with reasons of the taxation on 5<sup>th</sup> March, 2009 by the taxing master.**
- 2. That the taxation by the taxing master on 5<sup>th</sup> March, 2009 be set aside.**
- 3. That the Objectors/Respondent party to party bill of costs be taxed by another taxing master.**
- 4. That the costs of this application be provided for.**

The application is supported by the annexed affidavit of DEREK HOLMES sworn on 25<sup>th</sup> November, 2011 and is based on a long list of grounds. When the matter came for hearing, Miss Kilonzo for the Applicant told the court that the taxing officer assessed the objector's party and party bill of costs at Kshs. 998,475.00. Aggrieved by that decision, the executor filed a Notice of Objection to the said taxation on 13<sup>th</sup> March, 2009. The executor also requested for reasons for the taxation on the 13<sup>th</sup> March, 2009 but reasons for the taxation have never been supplied. It is for this reason that the Applicant still seeks the reasons of the taxation in order to facilitate a reference to the High Court.

Oposing the application, Ms. Gathaara argued that this application was similar to another one dated 4<sup>th</sup> April, 2009. She submitted that a ruling on taxation was given on 5<sup>th</sup> March, 2009 and it was typed. It was given in the presence of the advocate for the Applicant. Owing to the fact that no other reasons were given, may be there were no other reasons. Perhaps there are no other reasons other than those given in the ruling. Upon receiving the ruling, the Applicants could have asked for further reasons but did not do so. What is contained in the ruling, therefore, constitutes the reasons of the taxing officer for his ruling.

Paragraph 11 of the Advocates Remuneration Order provides as follows-

**“(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 out the grounds of his objection.**

**(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.”**

Ms. Gathaara told the court that this application was similar to the one filed on 4<sup>th</sup> April, 2009. That is correct. Correct as it is, however, Judge Kimaru is on record as observing that the procedure by which an assessment of costs by a taxing officer may be challenged in the High Court is provided for in paragraph 11 of the Advocates Remuneration Order (supra). Under paragraph 11(1) the aggrieved party is required within 14 days after the taxation to give notice in writing to the taxing officer setting out the items of taxation to which he objects. In the present application the executor objected to the whole taxation. Under paragraph 11(2), the taxing officer was required to provide reasons for his decision on all the items which the executor had objected to.

However, it is clear from the record that the taxing officer has so far not given reasons for the decision that was made. Only after the reasons have been given by the taxing officer can the executor file a reference challenging the taxation before this court. Judge Kimaru specifically observed that the taxing officer had not given reasons for a decision which was rendered on the items of taxation challenged by the executor

For the above reasons, I find that the executor remains in a precarious position in which he cannot file a reference without the reasons setting out the grounds for the taxation. Unless the executor is assisted with the provision of the reasons for taxation, the executor will never be able to file the reference required. Consequently, since it is more than 2 years since the request for the reasons was made, and to date there has been no response thereto, I find it in the interests of justice to direct that the taxation which is the subject of this application be and is hereby set aside and that the objectors/Respondents party to party bill of costs be taxed by another taxing officer.

Costs in the cause.

**DATED and DELIVERED at NAIROBI this 11<sup>th</sup> day of October 2012.**

**L. NJAGI  
JUDGE**