



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 323 of 2006

RUSTAM HIRA.....ADVOCATE/PLAINTIFF

VERSUS

ORIENTAL COMMERCIAL BANK LTD

FORMERLY THE DELPHIS BANK LTD.....DEFENDANT

RULING

This application is brought by a Notice of Motion dated 14th June, 2010 and taken out under **Section 3A** of the **Civil Procedure Act, Order L rule 1** of the **Civil Procedures Rules** and paragraph 11 of the **Advocates Remuneration Order**. The Client/Applicant thereby prays for orders that the decision of the taxing master delivered on 10th November, 2009 be set aside, and that the court do order that the Advocate/Respondent's bill of costs filed herein be remitted back to the Deputy Registrar for taxation afresh, and that costs of this application be provided for.

The application is supported by the annexed affidavit of Kithinji Marete sworn on 4th June, 2010.

In opposition, Mr. Hira, for the Advocate/Respondent filed a replying affidavit sworn on 20th July, 2010. He deposes that the supporting affidavit herein contradicts in many respects the affidavit sworn on 20th February, 2009 to set aside the first taxation.

After considering the application and submissions of counsel, I note that the 1st taxation in this matter was set aside and that this is a second taxation which is now sought to be set aside. Whereas there is nothing wrong in so doing, the correct procedure should be followed.

This application is brought, inter alia, under paragraph 11 of the Advocates Remuneration Order. That paragraph is in the following terms-

“11.(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.”

In the two letters dated 24th November, 2009 and 29th March, 2010 and addressed by Mr. Marete to the Deputy Registrar, I note that learned counsel wrote that “...***pursuant to the provisions of paragraph 11(1) of the Advocates Remuneration Order, we hereby request the reasons for the decision of the honourable Taking Master delivered on 10/11/2009...***” This is contrary to paragraph 11(1) “***which requires any party objecting to the decision in writing of the items of taxation to which he objects.***” Clearly, Mr. Marete has not complied with this requirement inasmuch as he has not specified the specific items of taxation to which he objects. This makes it difficult for the taxing officer to record and forward to the objector the reasons for his decision “***on those items***” as required by paragraph 11(2).

For the above reasons, I find that the request by the Applicant is out of accord with paragraph 11 (*supra*) and the application is hereby struck out with costs.

L. NJAGI
JUDGE

DATED and DELIVERED at NAIROBI this 19th day of November, 2012

MABEYA
JUDGE