



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & TAX DIVISION – MILIMANI**  
**MISC APPLICATION NO. 516 OF 2009**

**EDWIN K NJAGI T/A E.K. NJAGI & CO.**  
**ADVOCATES .....RESPONDENT**

**VERSUS**

**LUCY WAITHERA MWANGI.....APPLICANTS**

**JOHN IRUNGU GITHINJI.....**

**JULIUS KARIUKI MWANGI.....**

**RULING**

This application is brought by way of a Chamber Summons dated 9<sup>th</sup> July, 2010, and taken out under Paragraph 11 of the Advocates (Remuneration) Order. The applicants thereby seek orders that –

- (1) The decision of the taxing master on the Bill of Costs dated 12<sup>th</sup> May, 2009 and amended on 2<sup>nd</sup> December, 2009 and the resultant certificate of costs be set aside.**
- (2) In the alternative, the decision of the taxing officer on certain specified items of the Advocate/Respondent’s bill of costs be set aside.**
- (3) The Bill be referred back for fresh taxation under a different taxing officer with appropriate directions.**
- (4) That the costs of this application be provided for.**

The application is supported by the annexed affidavit of Lucy Waithera, one of the Applicants, and is based on the grounds that –

- (a) **The taxing officer erred in allowing the bill at Kshs 32,447,332/-.**
- (b) **The taxing officer fell in error in stating that the value of subject matter could be determined from the pleadings and in his determination thereof.**
- (c) **The taxing officer exercised his discretion improperly in increasing the instruction fees to Kshs 5,000,000 as there is no justification for such an increase.**
- (d) **That the suit was referred to arbitration even before the pleadings were closed and had not been fixed for hearing to warrant getting up fees of Kshs 1,666,66/- allowed under item 2.**
- (e) **The taxing officer was manifestly in error in allowing further instruction fees of Kshs 5,000,000/- under item 40 when the same was part of instruction fees already charged under item 1 of the bill.**
- (f) **That the suit upon being referred to arbitration could not attract further instruction fees which was allowed by the taxing officer at Kshs 5,000,000.**
- (g) **That the taxing officer fell in error in allowing items not provided for in the remuneration order.**
- (h) **That the taxing officer fell in error by disregarding submissions in opposition to the bill and allowing all other items as drawn stating that the same are "... largely drawn to scale". The said items are not drawn to scale as evident from submissions in opposition to the bill on 16<sup>th</sup> December, 2008.**
- (i) **The taxing officer erred in allowing as drawn several items in the bill when the same were disputed and were not drawn to scale under the Advocates (Remuneration) Order.**
- (j) **The taxing officer erred in allowing as drawn disputed items for perusal without production of the documents perused or certificate thereof despite the applicants request for the same.**
- (k) **The taxing officer erred in allowing several disputed items of disbursements in the bill without production of documents and/or receipts to authenticate the same.**
- (l) **The bill as taxed by the taxing officer is manifestly excessive and unjust.**

The application is opposed by the replying affidavit of Edwin K Njagi, Advocate, sworn on 30<sup>th</sup> September, 2010.

Paragraph 11 of the Advocates (Remuneration) Order under which the reference is brought provides that  
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“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 a chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”**

On 17<sup>th</sup> June, 2010, the Applicants gave notice of objection to the decision on taxation on certain specified items and requested the taxing officer’s reasons for his decision on those items for purposes of reference to a Judge. Unfortunately, they do not seem to have followed up the issue of the taxing officer’s reasons for the taxation. Consequently, the said reasons are not attached to the application and it is not possible for this court either to agree or disagree with the taxing officer in the absence of those reasons.

I therefore find that this application was brought to court prematurely and the Applicants ought to have pressed for the reasons before filing the reference. For these reasons, the application is struck out with costs.

The Applicants are at liberty to file a formal application under Paragraph 11 (4) of the Advocates (Remuneration) Order for enlargement of time within which to file an appropriate reference incorporating all the relevant documents.

**DATED and DELIVERED at NAIROBI this 22<sup>nd</sup> day of February, 2011**

**L NJAGI**

**JUDGE**