



## ADVOCATES ACT

· **Para. 11 of the Advocates (Remuneration) Order provides process of referring taxation to a judge.**

### REPUBLIC OF KENYA

### IN THE HIGH COURT OF KENYA

### AT MERU

### MISC. APPLICATION NO. 157 OF 2010

**ADAN GUYO T/A MANSILLE MEDICAL  
CENTRE.....PLAINTIFF**

**VERSUS**

**DANIEL GIKUNDA ANAMPIU T/A GIKUNDA ANAMPIU & CO.  
ADVOCATES .....DEFENDANT**

### RULING

The firm of Gikunda Anampiu & Co. Advocates (the law firm) filed an advocate/client bill of costs before this court but relating to services they extended to their client *Adan Guyo T/A Mansille Medical Centre* (Guyo). The bill was fixed for taxation on 3<sup>rd</sup> December 2010. Guyo according to the proceedings did not attend that taxation. The ruling of that taxation was delivered on 11<sup>th</sup> January 2011. The law firm applied for execution of those costs. I can see in this court file warrants of attachment and sale addressed to Quick Line Auctioneers. The warrants of attachment and sale are to be executed against Guyo. I however could not find in this file an entry of judgment of the taxed costs. Guyo has filed a Notice of Motion dated 21<sup>st</sup> January 2011. By that Notice of Motion he seeks to set aside the taxation ruling of 11<sup>th</sup> January 2011. When it came for hearing, the law firm had filed a preliminary objection. The preliminary objection was argued before me on 2<sup>nd</sup> February 2011. Mr. Gikunda Anampiu in support of that preliminary objection submitted that the Notice of Motion is incompetent because Guyo failed to raise objections as per paragraphs 11 of The Advocates (Remuneration) Order. Mr. Gikunda Anampiu submitted that the Notice of Motion should be struck out for that failure. Guyo did not have legal representation. His responses to the submissions by Mr. Anampiu failed to respond specifically to the preliminary objection raised. He did not appreciate the content of the preliminary objection. I have on my own perused this court file. I found that on 7<sup>th</sup> January 2011 Guyo filed objection to almost all the items

of the bill of costs. This was four days before the ruling of the taxation was delivered. Paragraph 11 of The Advocates (Remuneration) Order which provides the process of referring taxation before a judge provides as follows:-

***“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.***

***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.***

***4. The High Court shall have power in its discretion by order to enlarge the time fixed for subparagraph (1) or subparagraph (2) for taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”***

In my view, Guyo has already filed his objection as required by that paragraph. It now falls upon the learned taxing master to give reasons for his decision on each item that Guyo has objected to. See paragraph 11 (2). It is only after 14 days of receiving the reasons from the taxing master that Guyo would be obligated to refer the matter to the judge for determination. Guyo has however already done so by the application dated 21<sup>st</sup> January 2011. It therefore follows that once the reasons are given by the taxing master, this court will properly be seized of this matter. There is therefore no basis for the preliminary objection raised by the law firm. I make the following orders:-

***1. The preliminary objection dated 1<sup>st</sup> February 2011 is dismissed with costs being awarded to Adan Guyo.***

***2. The taxing master is requested to forward to the parties his reasons on items objected to by Adan Guyo as per the objection filed on 7<sup>th</sup> January 2011. The Deputy Registrar of this court is requested to bring to the attention of the taxing master Mr. K.W. Kiarie this order.***

***3. There shall be stay of execution of the tax costs in this matter until further orders of this court.***

***Dated, signed and delivered at Meru this 17<sup>th</sup> day of March 2011.***

**MARY KASANGO  
JUDGE**