



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. APPLICATION NO. 200 OF 2006

NYAMOGO & NYAMOGO ADVOCATES.....ADVOCATE/RESPONDENT

VERSUS

JOSEPH M. MWANGI.....CLIENT/OBJECTOR

RULING

Pursuant to the provisions of paragraph 11 (2) of the Advocates (Remuneration) Order, the client/objector took out the Summons dated 28th October 2008 in which he asked to be given the following order:

1. ***That this Honourable Court may be pleased to review and/or set aside the Deputy Registrar's ruling delivered on the 22nd of July 2008 on the Advocate/Respondent Bill of costs dated the 12th of June 2008.***
2. ***That this Honourable Court be pleased to make such other and/or further orders as it may deem just and fit to make in the circumstances.***
3. ***That the costs of and occasioned by this application be provided for.***

When served with the aforesaid summons, the firm of Nyamogo & Nyamogo Advocates filed a notice of preliminary objection dated 18th march 2011 arguing that the court had no jurisdiction to hear and determine the application. The preliminary objection is the subject matter of this ruling.

It is the submission of Mr. Nyamogo, learned advocate representing the firm of Nyamogo & Nyamogo Advocates that the client did not comply with the paragraph 11 (2) of the Advocates (Remuneration) Order. It is alleged that the reasons were not sought prior to the filing of the Summons. It is further argued that taxation in this matter was done on 22nd July 2008 whereof the taxing officer made an award of Ksh.217,655/95 to the advocate. The client is said to have instructed its advocate to seek for reasons and that the advocate did so on 31st July 2008. It is the submission of Mr. Nyamogo that the reasons for the decision of 22nd July 2008 were not sought. Mr. Ogotu, learned advocate for the client, opposed the preliminary objection stating that the client complied with the provisions of paragraph 11 (2) of the

Advocates (Remuneration) Order. I have looked at the averments and the annexures attached to the affidavit of Karen Njagi which was filed in support of the Summons. It is quite obvious that the client through his advocates requested the taxing officer to provide reasons for his decision of 22nd July 2008 vide their letter of 24th July 2008 and filed in court on 31st July 2008. The taxing office responded to that request by giving his reasons in his letter of 18th September 2008. The first preliminary point must therefore fail.

The other ground raised and argued is that this court is *functus officio* since a similar objection was heard and determined before the Honourable Mr. Justice Makhandia vide Nyeri H.C.C.C. No. 75 – 99 of 2008. It is stated that this court gave the advocate judgment on 17th September 2010 on costs thus the issue touching on taxation is overtaken by events. Mr. Ogutu did not address this court on the latter issue. The record shows that on 17th September 2010, this court gave a declaratory judgment against The Cooperative Insurance Company (K) Ltd., the client's Insurer in favour of the Advocate. In the suit, the Advocate had sued the client's Insurer claiming for an order for declaration that the Insurer is liable to pay the party and party taxed costs against their insured, Joseph Mboi Mwangi, the client herein. With respect, I am convinced by the submissions of Mr. Nyamogo, that the Summons dated 28th October 2008 is overtaken by events. A judgment has been given on the basis of the taxed costs. There is an allegation that the Insurer has settled the decree. It will be against public policy to re-open such proceedings. It would appear the client is being prompted by his former Insurers to do an appeal through these proceedings. The question is: of what use will the Summons serve? In the end I find the preliminary objection to be well founded on this ground alone. The same is upheld. The resultant order is that the Summons dated 28th October 2008 is ordered struck out with costs to the Advocate.

Dated and delivered at Nyeri this 17th day of June 2011.

J. K. SERGON

JUDGE

In open court in the presence of Miss Wambui holding brief Ombongi for the Respondent. No appearance Applicant.

Court: Parties to be supplied with copies of the ruling and proceedings upon payment of the necessary copying charges.

J. K. SERGON

JUDGE