



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Miscellaneous Cause 1060 of 2009

IN THE MATTER OF TAXATION OF COSTS
BETWEEN ADVOCATE AND CLIENT
IN THE MATTER OF THE ARBITRATION PROCEEDINGS BETWEEN
WORLD DUTY FREE VS. THE REPUBLIC OF KENYA
BETWEEN
ATTORNEY GENERAL.....APPLICANT
AND
KENNETH KIPLAGATRESPONDENT

RULING

The applicant filed a Miscellaneous Civil application purportedly under the provisions of **Section 3A** of the **Civil Procedure Act** and the inherent jurisdiction of this court seeking several orders from the court. The application seeks an order from this court staying proceedings before the taxing officer pending the hearing and determination of the application. He further seeks an order from the court directing the taxing officer to give the applicant an opportunity to argue his preliminary objection to the bill of costs as per the duly filed notice of preliminary objection dated 25th February 2010. The applicant further sought an order from this court seeking to compel the taxing officer to allow him to reply to the respondent's written submissions to the applicant's preliminary objection dated 1st March 2010. The applicant further sought an order from the court to set aside, vary or review the taxing officer's directions given on 1st March 2010. The applicant seeks a further order directing the taxing officer to first hear and determine the issue of jurisdiction that has been raised by the applicant in his preliminary objection. The application is supported by the annexed affidavit of Emmanuel Bitta, an advocate practicing as such in the Civil Litigation department of the applicant and the grounds stated on the face of the application.

The application is opposed. The respondent swore a replying affidavit in opposition to the application. In essence, the respondent states that the application had been filed in abuse of the procedure of the court; had been filed with the intention of forestalling the delivery of a ruling by the taxing officer; is meant to delay and stall the taxation of the respondent's bill of costs; that the application is an abuse of the due process of the court; and finally that the application had been brought prematurely before this court as it seeks to challenge the decision of the taxing officer before the same has been delivered. He urged the court to disallow the application.

At the hearing of the application, I heard oral submissions made by Mr. Bitta for the applicant and Dr. Kiplagat

for the respondent. I have carefully considered the facts in issue in this application. The issues for determination by this court are twofold; firstly, whether the present application is competently before this court and secondly, if the first issue is determined in the applicant's favour, whether the applicant established sufficient grounds to entitle this court grant him the orders sought in his application. Certain facts are not in dispute in this application. It is not disputed that the respondent present his bill of costs for taxation by the taxing officer of this court. According to the respondent, the applicant has for a long time sought to frustrate the taxation of his bill of costs by failing to abide by the time lines set by the taxing officer for the doing of certain acts. The applicant on his part is of the view that the taxing officer had frustrated him from articulating his case by preventing him from ventilating his preliminary objection touching on the jurisdiction of the said taxing officer in assessing the respondent's bill of costs. Unfortunately for both the applicant and the respondent, they did not annex proceedings before the taxing officer to enable the court determine whether the allegations made by the applicant and the respondent contain any element of true. This court will therefore refrain from making any finding in regard to the said allegations at this point in time.

It is apparent that the applicant wishes to have this court render a decision in respect of a matter that is pending determination before the taxing officer. In the first place, it was evident that the applicant breached the laid down procedure in re-constructing a file of this court without first seeking the leave of this court. It was unprocedural for the applicant to have a file re-constructed when he knows where the court file is. I think such abuse of the procedure of the court should not and cannot be tolerated. Court proceedings can only be taken in one court file and not in multiple court files that are opened at the instance of a litigant.

On the merits of the application, it is clear that this court lacks jurisdiction to grant the orders sought by the applicant in his application. The application before this court is not a reference filed under **paragraph 11(1)** of the **Advocates (Remuneration) Order**. The taxing officer of this court is yet to render a decision that is capable of being challenged by way of reference to this court. Neither has the taxing officer referred any dispute regarding the taxation of the respondent's bill of costs to this court for its opinion as anticipated under **paragraph 12(1)** of the **Advocates (Remuneration) Order**. This court cannot invoke its inherent jurisdiction where there are specific provisions of the law governing the particular area of the law. I think it is now settled that in cases involving taxation of costs, the only applicable legal regime is the law as set out in the **Advocates Act** and the **Advocates (Remuneration) Order**. As was held by Ringera J. in **Machira & Co. Advocates vs Arthur Magugu & Anor Nairobi HC Misc. Civil Application No.358 of 2001(Milimani) (unreported)** at page 10 of his ruling:

"...the Advocates Remuneration Order is a complete code and there is no provision for the invocation of the Civil Procedure Rules. It does not provide for an appeal from any sort of decision by the taxing officer and indeed order 42 of the Civil Procedure Rules is clear that appeals lie either as of right or with leave from orders made under the Civil Procedures Rules. No mention is made of orders made under the Advocates Remuneration Order. And it is a basic principle of procedural law that appeals to the High Court lie only where a right of appeal has been conferred by statute. Secondly, as I understand the practice relating to taxation of bills of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to the judge in accordance with paragraph 11 of the Advocates Remuneration Order."

I agree wholeheartedly with the above statement of the law. In the present application, it is clear that the applicant wishes to ride roughshod on the procedure regarding approach to this court for the purpose of securing the arrest of the delivery of a ruling by the taxing officer. Unfortunately for the applicant, in so doing, he abused the due process of this court. The applicant is advised to wait for the decision of the taxing officer, and if he is aggrieved, he is at liberty to file reference to this court under the relevant applicable laws. The applicant shall be at liberty to raise any issue regarding the taxation of the said bill of costs, including whether the taxing officer has jurisdiction to tax the said bill of costs.

In the premises therefore, it is evident from the foregoing that the applicant's application filed on 12th March 2010 lacks merit. There are no sufficient grounds to entitle this court find in favour of the applicant. The applicant's

application is hereby dismissed with costs to the respondent.

DATED at NAIROBI this 24th day of MARCH 2010.

**L. KIMARU
JUDGE**