



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Miscellaneous Civil Application 241 of 2008

RATEMO OIRA & CO. ADVOCATES.....APPLICANT

VERSUS

ELDORET EXPRESS CO. LTD.....RESPONDENT

RULING

The applicant's Advocate/Client Bill of Costs was taxed and allowed against the respondent in the sum of Kshs.342,809/= on 26<sup>th</sup> January, 2009. By an application dated 16<sup>th</sup> July, 2009, the applicant now seeks that the sum taxed be made judgment of the court and that the same be paid with interest. The main ground in support of the application is that the respondent has not filed a reference by way of an appeal against the taxation or obtained orders of stay of execution. The respondent on the other hand has brought an application dated 13<sup>th</sup> January, 2010 for stay of execution of the Certificate of Taxation, extension of time for the respondent to apply for grounds and/or reasons from the Deputy Registrar following the taxation and the court to direct the time limit within which the respondent should file its reference after the Deputy Registrar has furnished the grounds/reasons.

Both applications were canvassed together and the question arising is whether judgment, as sought by the applicant can be entered in view of the respondent's application for stay of execution and extension of time. I will start with the respondent's application which is expressed to be brought under **Rule 11(2)&(4)** of the **Advocate Remuneration Rules, section 3A** of the **Civil Procedure Act** and **Order XXI rule 22(2)** of the **Civil Procedure Rules**.

The respondent's counsel has averred that the respondent was not notified of the date of taxation; that thereafter the court file went missing until April, 2009 by which time the period fixed for objection had lapsed. The applicant filed a notice of preliminary objection in which it is submitted that the respondent's application does not comply with **Order 50 rule 7** of the **Civil Procedure Rules**; that the application offends **section 7** of the **Civil Procedure Act** and **section 51(2)** of the **Advocates Act**. It was finally submitted that time having lapsed cannot be extended.

I will start with the last point, **Rule 11 (4)** of the **Advocates (Remuneration) Order** provides that:

**“The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the 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.”**

This court therefore at its discretion may enlarge time even after such time has elapsed.

Secondly, it is a mandatory requirement under **Rule 13(2)** of the **Advocates (Remuneration) Order** that due notice of the date fixed for taxation be given to both parties who are entitled to attend. It is not in contention that the taxation proceeded *ex parte*.

On 8<sup>th</sup> December, 2008 the respondent took 26<sup>th</sup> January, 2009 for taxation. On that date however, the

respondent was absent and after brief submissions the taxing officer gave a date for the ruling. The ruling could not however be written as the original file was still missing. After nearly three (3) months it was delivered.

The respondent having taken the date for taxation and having failed to attend court cannot be heard to complain that the matter proceeded *ex parte*. Secondly, the ruling was delivered on 6<sup>th</sup> April, 2009 and this application brought on 22<sup>nd</sup> January, 2010 – after a delay of nearly nine (9) months, yet according to the respondent’s advocate’s averments in this application, the respondent was aware of the taxation on the same date, 26<sup>th</sup> January, 2009. No explanation for that delay has been offered.

For these reasons, I decline to exercise my discretion in favour of the respondent with the result that the chamber summons of 13<sup>th</sup> January, 2010 is dismissed with costs.

I turn to the applicant’s motion dated 16<sup>th</sup> July, 2009. A Certificate of Taxation dated 29<sup>th</sup> April, 2009 was issued to the applicant. In terms of **section 51(2)** of the **Advocates Act**, that certificate is final as to the amount of the costs covered thereby.

That being so, I hereby enter judgment for the applicant in the terms of prayers 1 and 2 of the motion. I award costs of this application to the applicant.

**Dated, Signed and Delivered at Nakuru this 30<sup>th</sup> day of April, 2010**

**W. OUKO**  
**JUDGE**