



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU**

**Miscellaneous Civil Application 7 of 2004**

**VERNANDO GACHANGI.....APPLICANT  
VERSUS  
JOHN NDAMBIRI KARIUKI.....RESPONDENT**

**R U L I N G**

This is the Ruling in respect of the notice of preliminary objection dated 6/4/2010. The preliminary Objection was raised in respect of Mr. Kathungu's application dated 10/1/2004. Having considered that Preliminary Objection and the submissions of both counsel, I am convinced that the Preliminary Objection has merit and I will uphold it for the following reasons.

Firstly, I agree with Mr. Muraguri that Mr. Kathungu had no locus or capacity to file this application. He admitted that he came on record after Judgment had already been given. He was enjoined by law to comply with the provisions of Order III Rule 9A C.P.A. which are mandatory. Mr. Kathungu told this court that he came on record alongside the counsel previously on record. That however cannot be so because the name of such firm of Advocates does not appear anywhere on either the application or his annexure '**JK1**' which is the notice of objection on taxation. This application ought therefore to have been struck out on that issue alone.

Secondly, under Rule 11(1) of the Advocates (Remuneration) order the party who wishes to object to the decision of the taxing officer is required to do so within 14 days after the decision in question. In this case, annexure '**JK1**' clearly shows that the notice is dated 4/12/2002 while the taxation of the Bill of Costs (according to the application dated 10/1/2004) was done on 31/10/2002 i.e 5 weeks later. There is nothing to show that leave to file the notice of objection was sought and granted. The said notice was therefore given to the taxing officer out of time and that may even explain the officer's decision not to act on it. I need not even consider the other issue raised. Those 2 grounds suffice to warrant a dismissal of the application dated 10/1/2004. I therefore uphold the Preliminary Objection dated 6/4/2010 and dismiss the application dated 10/1/2004 with costs to the Respondent.

**W. KARANJA  
JUDGE**

Delivered, dated and signed at Embu this 24<sup>th</sup> day of May 2010

**In presence of:- Both parties and Mr. Utuku holding brief for Mr. Kathungu for Applicant.**