

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPLICATION 170 OF 2005

LEDISHAH J.K. KITTONY & COMPANY ADVOCATESRESPONDENT

-VERSUS-

BARNABAS TENDENEI..... APPLICANT

RULING

Before me is a Chamber Summons application brought under order 1XB rule 8 of the Civil Procedure Rules and sections 3,3A and 63(e) of the Civil Procedure Act. It prays that the proceedings of the 29th April 2008 and all consequential orders be set aside and/or varied on the grounds that the Taxation of the Bill of Costs scheduled for the 29th April 2008 before the Deputy Registrar was not cause-listed on the said date and the exparte taxing was wrongful. That the taxed costs were very high and ought to be reviewed downwards and the application ought to be allowed in the interests of justice. The affidavit in support is sworn by the applicant.

In the Replying affidavit the application is said to be without merit and an abuse of the process of the court. That the date on which the bill was taxed was taken by the Respondent and served on the applicant and therefore whether or not the cause was listed for taxation was not material the applicant ought to have been before the taxing master. Submissions by both counsel appearing for their respective clients were in support of those respective averments in the application and affidavits. To the extent that this application challenges the amount taxed I find the application incompetent. It does not show the error on the taxation and the procedure followed is strange.

There is no reference filed, no reasons of the taxing master sought and the Ruling having been made on 6th May 2008 this application is brought way out of time. The Advocates (Remuneration) Order provisions in Rules 10 and 11 have not been adhered to.

The taxing master noted that there had been service of the taxation date. That the taxation was not listed on the day's cause list may have misled the applicant's Counsel not to attend could but should not have stopped him from checking to see if the Respondent who had served a taxation date would not attend court and proceed with the taxation as he did. The Advocate for the applicant did not act prudently. I find that there is not a reason given for me to grant the orders sought. I dismiss this application for being without merit. The Respondent will have the costs.

Orders accordingly.

DATED SIGNED AND DELIVERED AT ELDORET THIS 21ST DAY OF JULY, 2010.

P.M. MWILU.

JUDGE.

In the presence of

Kipseii Advocate for Applicant

Shibanda Advocate for Respondent

P.M. MWILU

JUDGE.