



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

Miscellaneous Application 749 of 2008

KAMUNYE GICHIGI & BURUGU ADVOCATES.....APPLICANT

VERSUS

TELECOM SOLUTIONS LIMITED.....1ST RESPONDENT

WAMCO PETROLIUM.....2ND RESPONDENT

MOHAMED A. ABKAR.....3RD RESPONDENT

R U L I N G

This is a Chamber summons application which has been brought by the Clients in an Advocate/Clients Bill of Costs. It is expressed to be brought under order XLVI rule 8, Order XXI Rule 22 of the Civil Procedure Rules and sections 3, 3A and 6 of the Civil Procedure Act. It seeks the orders made by this court against the Applicants on the 26th November, 2008 together with all the consequential orders set aside. Secondly that the court do strike out the Bill of Costs filed herein for being *res judicata*.

The grounds upon which the application is made are on the face of the application. In brief the Applicants are saying that they were not represented during the taxation of the Bill of Costs on 3rd November, 2008 due to inadvertence leading to the Advocate on record for the Client going to court late only to find that the matter had been dealt with. The other ground is that the Bill of Costs had previously been settled by the Applicants and payments made leading to the withdrawal of a **Misc. Application No. 525 of 2008** between the two parties.

The application is opposed. The Advocate with the Bill has filed grounds of opposition in which four grounds are raised:

1. **That the application is fatally defective, misconceived and an abuse of the court process.**
2. **There is no judgment or decree capable of being executed to warrant an order of stay.**
3. **That the Court's jurisdiction under rule 11 of the Advocate's Remuneration Order has not been invoked and therefore this court has no power to interfere with the Taxing Officer's decision of 26th November, 2008.**
4. **That the doctrine of *res judicata* does not apply as the earlier Bills of Costs were merely withdrawn before they were adjudicated upon by the taxing officer.**

I have considered the submission by both counsel, which are on record. The Applicant is trying to have the decision of the Taxing Officer made on 26th November, 2008 interfered with on grounds it was heard ex parte in the absence of the Client and on grounds that certain payments made by the client were not taken into account or reflected in the taxation.

Rule 11 of the Advocates Remuneration Order is very clear on how a reference challenging the decision of a Taxing Officer should be brought. In the first place the party seeking to challenge the decision of the Taxing officer should write to the Taxing Officer under rule 11(1), seeking reasons for the decision and indicating why the reasons are required. After the reasons are forwarded to the party, it is expected, if it so wishes to challenge the decision, that it will file an application under rule 11 of the Advocate's Remuneration Order. In that application, the decision of the Taxing Officer, and the reasons given for the decision, should form part of the annexures to the application in order to bring before the court the subject matter of the reference.

The Applicant/Client in this application has not invoked the correct provisions of the law, and therefore the court's jurisdiction has not been invoked. The application ought to have been brought under rule 11 of the Advocates (Remuneration) Order. Secondly, and also important, the decision to be challenged has not been placed before the court. Thirdly, the taxation took place on 3rd November, 2008 and no ruling was made until the 28th November 2008. If indeed there were payments made by the Client which were not reflected in the Bill of Costs, what the Client ought to have done is to apply to set aside the ruling of the Taxing Officer before the Taxing Officer himself either before or soon after the decision was made.

I do find that the application before the court is incompetent for the reasons I have given and, accordingly I do struck it down with costs.

Dated at Nairobi this 29th day of May 2009.

LESIIT, J.

JUDGE

Read, delivered and signed in presence of:

Ms. Kamuyu for Applicant

Mr. Burugu for Respondent

LESIIT, J.

JUDGE