



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

Civil Case 24 of 2004

JACKSON MARUSOI CHERUIYOTPLAINTIFF

VERSUS

TABELGA TAMENE CHEPKWONY 1ST DEFENDANT

JOHANA KOSKEI 2ND DEFENDANT

RULING

I: Background

1. The issue in this ruling involves TAXATION by the taxing master.
2. Sometime in the year 2003, the plaintiff had acquired a title deed and became the sole registered proprietor of land parcel LR Kericho/Saosa/Chemosit Block 1, Chepchabas/18. He filed a suit on 19th March, 2004 against the two defendants seeking therein eviction as trespassers to his land.
3. After a full hearing before Musinga J judgment was delivered on 3rd October, 2007 that dismissed the plaintiff's case on grounds that under Section 30 of the Registered Lands Act Cap 300 the defendant had overriding interest to the land.
4. Being dissatisfied with the decision of the said court the plaintiff intended to appeal. In the meantime on 22nd May, 2008 the defendants filed a party and party costs before the taxing master. The plaintiff protested on the grounds that they intended to appeal.
5. The Ruling was reserved by the taxing master for 7th August, 2008. The taxing master nonetheless proceeded to tax the bill on 22nd July, 2008 without the knowledge of the plaintiff/applicant. Taxation was awarded to the defendant/respondent at Kshs. 130,985/=. The same was to be executed against the plaintiff/applicant who lost their case. The said bill could have been objected to before the taxing master.
6. When the application of 13th March, 2009 was filed under certificate of urgency, this court ordered that it be duly served. On the day it was to come for inter partes hearing on 17th March, 2009 the parties consented that there be a stay of execution pending the hearing of the said application.

II: Application 13th March, 2008

7. It was argued that the certificate of costs be set aside and further that time to protest against the bill be enlarged under rule 11(1) of the advocates (*remuneration*) order.

8. The respondent/defendant objected to this on the grounds that it contravenes and offence paragraph 14 of the Advocate's Remuneration Act.

III: Opinion

9. Rule 11 of the advocates (*remuneration order*) provides that where there is a taxation an objection is or may be taken up. This objection to be made 14 days after the decision is made by the taxing officer and in writing as to what he objects to. The taxing master thereafter will forward his reasons for such objection within 14 days and then serve all the parties. Upon this reasons being given the said objector files a chamber summons in which he sets out all his objection.

10. The applicant/objector herein (*who is also the original plaintiff in the suit*) states that when the taxation took place he was absent. The respondent/respondent (*original defendant*) claims that the said applicant deliberately failed to attend court and therefore

i. Rule 14 of the advocate remuneration Act applies. Namely, in default of the advocate to attend taxation after notice has been given means that he or she will be liable to pay for any unnecessary or improper expenses.

11. The advocate for applicant is before this court not for objection proceedings under rule 11 but in effect seeking this court's leave to set aside the taxation orders for non attendance. He relied on Order 21 r 22(1) and 2, rule 11(4) of the Advocate's Remuneration Act.

12. Rule 11(4) of the remuneration act speaks of enlargement of time, that applicant may object to the taxation. The applicant though did not apply to enlarge for time until the execution stage. He seeks really to set aside the taxing masters decision.

13. I note for the case law of Chiriatti v Kahlili & others (1991) KLR 66 – The taxing is done at the discretion of the court.

14. The prayers the applicant may have is to enlarge the time in which to object to the taxation and not to set aside the taxation in this court.

15. It has been argued by the respondent that the applicant had argued this application before and stands to be Res judicata. I do not think so as it is only the High Court that may enlarge time.

16. I accordingly order that time be and is hereby granted to object to the decision of the taxing master by the applicant within fourteen days of to days date.

17. To this extent only is this application allowed. The rest of the prayers is dismissed. There be costs to the respondents.

DATED this 13th day of May, 2009 at KERICHO

M. ANG'AWA

JUDGE

Advocates

S.K. Siele Sigira advocate instructed by the firm of M/S S.K. Siele Sigira & co. advocates for the Plaintiff
– present

J.K. Kimetto advocate instructed by the firm of M/S A.C. Bett & Co. advocates for the Respondents -
present