



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Suit 56 of 2006

1. The advocates Act Cap 16 Laws of Kenya
2. The advocates (Remuneration) rules
 - a) Rules 11(1) and (4)
3. **Subject of main High court suit**
 - a) Burial dispute
 - b) Respondent/plaintiff appears in absence of applicant /defendant in court
that matters has been “sorted out” only issue of costs left.
 - c) Hon. Judge (Musinga J) marks case as finished “costs to be taxed if not agreed upon”
 - d) Respondent/plaintiff appears before taxing master and is award Kshs. 156,026/= as costs.
 - e) Applicant/defendant not aware of this taxation.
 - f) Files application 18th March, 2009 to enlarge time to defend the taxation.
 - g) Parties by consent agree to a stay of execution pending determination of application
(30th March, 2009 Ang’awaJ)
4. **Application 18th March, 2009 for:-**
 - i) Leave to enlarge time to object to the taxation.
 - ii) Application opposed as orders are illegal
5. **Held** – Taxation aside
6. **Case Law** – Nil
7. **Advocates**

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C.K. Korir Advocate instructed by M/S C.K. Korir & Co. advocates for the Plaintiff/Respondent

S.K. Siele Advocate instructed by M/S S.K. Siele & Co. Advocates for the Applicant/Defendant

ESTHER CHELANGAT RONO APPLICANT

VERSUS

ANDREW KIBII RONO RESPONDENT

RULING

Leave to enlarge time to object to taxation.

I: Background

1. The application of 18th March, 2009 involves the issue of taxation between the parties having been so filed by the defendant/applicant.

2. The main suit in this High court case was filed by the plaintiff/respondent that involved a burial dispute. No trial was heard but on the 16th October, 2006 the advocate for the applicant appeared before the Hon. Judge (*Musinga J*) and informed him that

“The matter has been sorted out. The only issue that remains is payment of costs”

3. The Hon. Judge made order that *“the matter marked as finished. Costs to be taxed if not agreed upon”*.

4. The plaintiff/respondent proceeded before the taxing master on 9th October, 2008 and the bill taxed at Kshs. 156, 626/= in the absence of the defendant/applicant.

5. An application dated 18th March, 2009 was duly filed by the defendant/applicant seeking for orders of enlargement of time under **rules 11(1)** of the advocates remuneration order be enlarged.

6. The parties agreed by consent to have a stay of execution pending the inter-parties hearing in this file on 30th March, 2009.

7. The delay of this matter was caused when the advocate failed to attend court for the hearing of the application and due to unforeseen circumstances by the court which is regretted.

II: Application 18th March, 2009

8. The applicant states that making the suit as finalized was done in the defendant/applicant absence. That being not aware of this and the taxed costs, he prays for the setting aside of such costs.

9. The respondent/applicant herein had objected to the application claiming it was illegal, all the applicant could do is object to specific items and not set aside the taxation award.

III: Findings

10. The applicant herein could have approached these issues in various ways. He could have sort orders

to set aside the exparte orders declaring this matter settled in his absence on 16th October, 2006 before Musinga J.

11. The applicant on the other hand has only the issue of taxation that he feels aggrieved against. This issue indeed is one whereby his presence was not there when the orders of taxation was made.

12. In the interest of justice and due to delay of concluding this application, this court accordingly gives the advocate for the applicant leave to enlarge time to challenge the taxed costs under **rules 11(1) and 11(4)** of the advocates (remuneration order). That he does so within twenty one days of to-days date. To ease of clarity Kshs. 156,026/= sum is set aside. Bill remains as is.

DATED this 31st day of July, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

C.K. Korir Advocate instructed by M/S C.K. Korir & Co. advocates for the Plaintiff/Respondent

S.K. Siele Advocate instructed by M/S S.K. Siele & Co. Advocates for the Applicant/Defendant