



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU Miscellaneous Civil Application 420 of 2008

RATEMO OIRA & CO. ADVOCATES.....APPLICANT

VERSUS

ELDORET EXPRESS CO. LTD.....RESPONDENT

RULING

A point of preliminary objection has been raised regarding the application dated 16th July, 2009 in which the applicant seeks that judgment be entered against the respondent in the sum of Kshs.235,089/= as taxed (with interest).

The objection is to the effect that this court lacks jurisdiction to entertain the application as judgment can only be entered by the taxing officer; that the High Court's jurisdiction in this regard is limited to determination of a reference arising from a taxation.

The applicant in opposing the notice of preliminary objection submitted that the objection lacks merit as no law has been cited to the effect that this court cannot enter judgment in a taxation. Counsel referred the court to the case of Kalonzo Musyoka & Paul M. Wambua (Practising

as Musyoka & Wambua, Advocates) Vs. Rustam Hira, Advocates H.C.Misc. Appl. No.444/2004 where the High Court (Waweru J) entertained a similar application.

I have considered these arguments and the above authority. The only question arising from this objection as expressed in those arguments is whether the High Court can entertain an application under section 51(2) of the Advocates Act.

Section 51(2) aforesaid provides that-

“51(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”
(Emphasis supplied).

In this application there is no dispute that a certificate of taxation has duly been issued by the registrar; that the same has not been set aside or altered. I have highlighted the provisions of section 51(2) to emphasize that the answer to the question posed earlier – whether the High Court can entertain an application under section 51(2), depends on the definition of the word “court” as used in the Advocates Act.

Court is defined in section 2 to mean “*the High Court*”. It therefore follows that an application under section 51(2) of the Advocates Act can only be heard by the High Court.

For that reason, the preliminary objection is overruled with costs to the applicant. The application may now be listed for hearing on a priority basis.

Dated, Signed and Delivered at Nakuru this 14th day of December, 2009.

W. OUKO
JUDGE.