



**E. N. NG'ANG'A & CO., ADVOCATES .....APPLICANT**

**V E R S U S**

**FLORENCE WAIRIMU MBUGUA .....RESPONDENT**

**R U L I N G**

On 22<sup>nd</sup> May 2007, upon application by notice of motion dated 28<sup>th</sup> March 2007, this court (Waweru, J) entered judgment for the Applicant under section 51(2) of the Advocates Act, Cap. 16 for taxed costs in the sum of KShs. 154,907/50 plus costs and interest. The judgment was *ex parte* in that there was no appearance for the Respondent. The court was satisfied, upon the affidavit of service filed on 22<sup>nd</sup> May 2007, that the Respondent had been duly served.

The Respondent has now applied by chamber summons dated 25<sup>th</sup> June, 2007 for two main orders:-

- (i) that the said judgment and all consequential orders be set aside; and
- (ii) that the certificate of taxation dated 9<sup>th</sup> August, 2005 upon which the judgment was premised be reviewed.

The application is based upon the grounds:-

- (a) that the Respondent was never served with any pleadings and/or court documents in this matter;
- (b) that the various affidavits of service sworn by one PETER Z. NJERU are false; and
- (c) that the court was misled into proceeding *ex parte*.

There is a supporting affidavit sworn by the Respondent. In it she depones, *inter alia*, that she has never been served with any court process herein by the aforesaid process-server, and that she was not aware of the taxation giving rise to the proceedings herein or the application for judgment.

The application is opposed. There is a replying affidavit sworn by the process-server. He reiterates the contents of the aforesaid affidavit of service sworn by himself and filed on 22<sup>nd</sup> May, 2007.

I have considered the submissions of the learned counsels appearing. One thing is clear. The taxation of the bill of costs cannot be challenged in the present application. This court has no jurisdiction at all to review the taxation as sought. Taxation of bills of costs and matters related thereto is the special jurisdiction of the taxing officer of the court. The court can be appropriately moved in challenge to taxation only by reference under paragraph 11 of the Advocates (Remuneration) Order. The present application is not such reference. Prayer No. 4 of the application is therefore misconceived.

Regarding prayer No. 3, it was brought to the attention of the court during arguments that the hearing date endorsed on the copy of the application for judgment (annexed to the affidavit of service filed on 22<sup>nd</sup> May, 2007) had alterations. Indeed this so. There is alteration in both the day and the month in the date.

I note from the court record that application for judgment was fixed for hearing only once, that is on 22<sup>nd</sup> May, 2007. That date was taken on 29<sup>th</sup> March, 2007. The altered date in the application appears to have been some day in April 2007. It is not clear when the alteration of the date was made. It is thus possible that the Respondent was never served with the application as she has so passionately urged.

I hold that the justice of this matter will be better served by hearing and determining the application for judgment *inter partes*. To facilitate this I will set aside the judgment entered *ex parte* on 22<sup>nd</sup> May, 2007 and all consequential orders. The Respondent may, within 21 days of delivery of this ruling file and serve papers in response to the application by notice of motion dated 28<sup>th</sup> March, 2007. The application may be fixed for hearing in the registry. There will be orders accordingly.

The application is thus allowed only to the indicated extent. Costs of the same shall be in the cause.

**DATED AT NAIROBI THIS 23<sup>RD</sup> JANUARY, 2008**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 25<sup>TH</sup> DAY OF JANUARY, 2008**