



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 837 of 2000

PALACE DRYCLEANERS LTD.....1ST PLAINTIFF

GEORGE GIKUBU MBUTHIA.....2ND PLAINTIFF/APPLICANT

VERSUS

KENYA POWER & LIGHTING CO. LTD...DEFENDANT/RESPONDENT

RULING

In the Chamber Summons dated 15th February 2008, the Applicant seeks orders:

- “1. THAT taxation of the defendant’s bill of costs which was done on 22nd January 2007 and order given on 23rd February 2007 be (set) aside and/or vacated ex-debito justitiae.**
- 2. THAT stay of execution of the order of taxation be granted pending the hearing and determination of this Reference from the decision of the taxing master.”**

The Applicant has said that he does not want prayer number 3 which is for costs of this application.

The Chamber Summons is said to be brought under Rule 11 (2) of the Advocates (Remuneration) Order and Section 3A of the Civil Procedure Act and based on grounds shown in paragraphs (a), (b) and (c) on the face of the Chamber Summons. The Applicant said that he has abandoned grounds (d) and (e).

The Respondent has filed grounds of Opposition saying that the Applicant was duly served with the notice of taxation and was well aware of the taxation scheduled for 22nd January 2007 and that therefore had the opportunity to be heard but did not appear so that he could be heard for the taxation and that otherwise the taxation of the Respondent’s bill of costs was properly and lawfully done, that the Chamber Summons herein is out of time and therefore defective, that the Applicant is estopped from denying the existence of the suit having agitated various proceedings therein, that the application is frivolous, vexatious and an abuse of the Court process.

There are two Plaintiffs in this suit where the Applicant before me now is the Second Plaintiff. The First Plaintiff is Palace Drycleaners Limited and I have been told that it is not a party in this Chamber Summons. The Respondent is the Defendant.

From what has been brought before me, the said Respondent, then as the defendant, filed a bill of costs

in this matter for taxation by the Taxing Officer. The taxation was scheduled for hearing on 22nd January 2007 and the Applicant was aware of the hearing date. He says that on the same date he also had another case HCCC No.937 of 1986 at Milimani Commercial Court and he decided to attend the Milimani Case. He therefore wrote a letter dated 19th January 2007 to the Deputy Registrar of this Court concerning this matter informing the Deputy Registrar that the hearing date was taken *ex parte* while he had also fixed HCCC No.937 of 1986 for hearing and that he was therefore not going to be available for the hearing of the taxation as scheduled. Curiously, that letter is neither addressed nor copied to the Respondent who therefore proceeded to come to this Court for the taxation. In the absence of the Applicant who had been duly served with the relevant notice for taxation, that taxation proceeded *ex-parte* and the relevant certificate of taxation was issued by the Taxing Officer (Deputy Registrar) on 20th March 2007, the ruling on the taxation having been delivered on 23rd February 2007. The Respondent is therefore set to execute or to claim the taxed costs. But in his Chamber Summons before me, the Applicant is saying that since the taxation was done in his absence, the taxation proceedings were void. He wants them be set aside or be vacated. He terms his application a reference as can be seen from prayer number 2 in the Chamber Summons.

Rule 11 (2) of the Advocates (Remuneration) Order under which this Chamber Summons is brought states as follows:

“(2) The Taxing Officer shall forth with record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons which shall be served on all the parties concerned, setting out the grounds of his objection.”

Looking at the last word in that quotation, Rule 11 (2) is a provision for “**Objection**” and not a provision for “Reference” Subrule (2) above must be read with Subrule (1) of Rule 11 which starts with the words

“Should any party “object” to the decision of the taxing officer _ _ _”

It follows that Rule II has nothing to do with “Reference”

If the Applicant meant a “**Reference**” the correct Rule is 12 which states:

“(1) With the consent of both parties, the Taxing Officer may ‘refer’ any matter in dispute arising out of the taxation of a bill for the opinion of the High Court.

“(2) The procedure for such ‘reference’ shall following that of a case stated but shall be to a Judge in chambers.”

It means Rule 12 is used when the Taxing Officer is still handling the taxation so that the subsequent opinion of the High Court goes to the Taxing Officer for him to use in the taxation to finalise the taxation proceedings before him – in that particular case.

Moreover Rule 11 is only used to challenge the merits of the decision of the Taxing Officer such as whether an item or more items in the bill of costs was or were properly taxed. The aim is to have the certificate of taxation set aside or altered.

What the Applicant is applying for in this Chamber Summons neither falls under Rule 11 nor falls under Rule 12. Yet those are the only two relevant provisions for dissatisfied parties to take taxation proceeding or the decision thereof to the High Court under Provisions of the Advocates (Remuneration) Order.

The Applicant included Section 3A of the Civil Procedure Act, but that should not apply where there are clear relevant provisions of the law. Otherwise if the Applicant has to go to the Civil Procedure Act,

then, I think, the proper provisions would be Order 1XB Rule 8 of the Civil Procedure Rules.

Failure by a duly served party to attend Court on the scheduled date does not render proceedings taken in his absence void or amount to the violation of the principle of natural Justice.

Moreover, the Applicant should realize that there is no convincing evidence that the letter he wrote to the Deputy Registrar was before the Taxing Officer when the Taxing Officer was doing the taxation. Secondly even if that letter was before the Taxing Officer, there is no law making it mandatory for the Taxing Officer to automatically accept such letter and proceed to adjourn the case. The situation here was even hopeless since the Applicant had completely ignored the Respondent so that he neither addressed the letter to the Respondent Counsel nor send a copy to the Counsel who had therefore taken his time to attend the Court and had the right to oppose the Applicant's Application for adjournment in case there had been such an Application before the Taxing Officer either by way of a foresaid letter or by a person going to court to make the application.

More may be there to say, but I think what I have so far said is sufficient to dispose off this Chamber Summons. In my opinion, not only does this Chamber Summons lack merits but is also a misdirection.

Accordingly, the said Chamber Summons is hereby dismissed with costs to the Respondent.

Date and delivered at Nairobi this 13th day of March 2008.

J.M. KHAMONI

JUDGE

Present:

Applicant in person

M/s Okumu for the Respondent

Muturi Court Clerk

Further Order:

Upon application, orally, by the Applicant, leave to appeal from this ruling is hereby granted.

J.M. KHAMONI

JUDGE

13.3.2008