



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

Misc Civ Appli 68 of 2004

WANGA & COMPANY ADVOCATES APPLICANT

VERSUS

DORCAS J. KISORIO RESPONDENT

RULING

This is an application by the Applicant for enlargement of time within which the respondent/Applicant should give Notice in writing to the taxing master of the items of taxation to which she objects. Application is made under Rule 11 (4) of the Advocates (Remuneration) Order Cap 16 Laws of Kenya.

By a Ruling delivered on 8.05.07 the Honourable Lady Justice Gacheche had granted the Applicant leave to file a reference within 14 days of the delivery of the Ruling. The Applicant duly filed the reference in terms of the Court Order. However, she claims that she realized that from the wordings of Rule 11 of the Advocates (Remuneration) Order that the giving of Notice to the Taxing Master to give reasons for the items taxed is a first and pre-requisite step before the reference can be made before a Judge in Chambers. That if the reasons furnished by the Taxing Master are not convincing then and only then can a reference be made to the Judge.

The application is opposed. The Respondent says that the application is an abuse of the court process as no reasons are given for the lack of Notice.

I have considered the application. I agree with the Applicant that it is a condition precedent that the Taxing Master gives the reasons for the taxation on the items to which objection is taken before a reference may be filed under Rule 11 (2). For the Taxing Master to give reasons, the Applicant must have within 14 days after the decision given notice in writing to the taxing officer of the items to which he objects.

In her Ruling, Justice Gacheche stated:-

“It is clearly obvious that the fourteen days had long expired by the time she learnt of it and in view of her explanation she could not have a reference within the stipulated time against a taxation which she was not aware of. In my opinion this Applicant ought to have moved this Court to enlarge time within which to file her reference in accordance with sub-rule (4), I would thus find that this application is misconceived.”

The Honourable Judge however invoked the inherent jurisdiction of the Court and directed that the

reference be filed within 14 days.

From the foregoing, it is clear to me that while the Court was magnanimous and intended well, the reference could not have been filed without the Notice of Objection. The Applicant practically could not file Notice of Objection under Rule 11 (1) neither could she ask for reasons.

I think that in the interest of fairness and justice and since the court's order herein had placed the applicant in a bind, I do hereby extend the period within which the Applicant was to file the Notice of Objection and request for reasons for the decision.

The Applicant is granted 14 days to do so. The Applicant shall pay the costs of the application as she should also have been more vigilant.

DATED AND DELIVERED AT ELDORET ON THIS 30TH DAY OF APRIL, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Otieno for Applicant

Mr. Chanzu holding brief for Mr. Omondi