



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc. Civil Application 221 of 2008

ROHIT DAVE.....PLAINTIFF

VERSUS

JOYCE W. WAITHANGA.....DEFENDANT

RULING

1. The instant application is brought by way of Chamber Summons under Rule 11(4) of the Advocates (Remuneration) Order, Section 44 of the Advocates Act and Schedule VIII of the Advocates (Remuneration) Order 2006 and all enabling provisions of the law by which the applicant seeks **ORDERS THAT:?**

(i) *The court be pleased to enlarge the time required by the applicant to give notice in writing to the taxing officer of the terms of the taxation to which he objects;*

(ii) *Costs of this application be provided for,*

which application is supported by the following grounds:?

(i) *The applicant was unable to file an objection to the taxing officer of the items of taxation to which he objects due to ill health.*

(ii) *The applicant's counsel was prevented from representing the applicant before the taxing officer due to an error in filing the Notice of Appointment of Advocates in a wrong registry.*

(iii) *The Respondent's Bill of Costs was taxed as drawn and the same was exaggerated and contrary to Schedule VIII of the Advocates (Remuneration) Order, 2006.*

(iv) *The delay in filing the notice of objection to the taxing officer was not deliberate.*

(v) *The applicant stands to suffer substantial loss if leave to file the notice of objection is not allowed."*

2. The application is also supported by the sworn affidavit of **ROHIT DAVE**, dated 2/04/2008 in which he says that he is the applicant herein and fully conversant with the facts of this case. He says that the Respondent's Bill of Costs was taxed on 31/01/2008 and that though he had instructed his advocate on record to represent him during the taxation, the said advocate, **MR. SIMON NDEGE**, failed to do for reason that he (advocate) was engaged in another matter and that the advocate who held Mr. Ndege's brief could not be given audience as the Notice of Change of Advocate had erroneously been filed before

the Rent Restriction Tribunal and not the Business Premises Tribunal. The applicant says further that it was this mix-up that led to the Respondent's Bill of Costs being taxed exparte. He finally says that the delay in challenging the decision of the Taxing Officer of the disputed items of the Bill was not deliberate but due to the applicant's ill-health.

3. Mr. Mose urged this application on behalf of the applicant and relied on both the grounds on the face of the application and the averments contained in the supporting affidavit. He said that the main reason why the applicant wants to challenge the taxation is because the Respondents Bill of Costs as filed and taxed was highly exaggerated.

4. Mr. Nyangena for the respondent opposed the application mainly on the ground that Counsel for the applicant is not properly on record since it is the firm of T.K. Kariba Mbaabu & Co. who are properly on record for the applicant. He also submitted that since the Respondent's Bill of Costs was duly served upon the firm of T.K. Kariba Mbaabu & Co. Advocates, the applicant lost his chance to contest the Bill when his advocates on record failed to appear at the taxation of the Bill. It was also Mr. Nyangena's submission that the applicant has failed to give a convincing reason for the misfiling of the Notice of Change of Advocates, and thus failed to comply with the provisions of Order 3 Rules 6 and 7 of the Civil Procedure Rules. In the alternative, Mr. Nyangena argues that even if it were to be accepted that the instant application is a new matter, still the present counsel has no audience because there is no Notice of Appointment of Advocate in accordance with the Rules. In summary, Mr. Nyangena contends that the applicant's application was brought in bad faith and that the court should not only find it so but also find that it is an abuse of the process of court.

5. I have considered the arguments for and against the application very carefully. The conclusion I have reached is that the application lacks merit. For one, counsel who appeared before me had no right of audience to do so, whether in terms of taking over the matter from the firm of T.K. Kariba Mbaabu & Co. Advocates or in their own right as new advocates. There was neither a Notice of Change nor Appointment of Advocate Notices filed herein.

6. Secondly, the reasons advanced in support of the application are spurious in my view. There is evidence on record to prove that T.K. Kariba Mbaabu advocates on record for the applicant were duly served with the Bill of Costs but for reasons only best known to the applicant and his counsel, the Respondent's Bill of Costs was not contested. This is a court of equity which does not aid the indolent and those who come before it with dirty hands.

7. In the result, the application is dismissed with costs to the respondent.

It is so ordered.

Dated and delivered at Nairobi this 16th day of May 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:?