



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

MISCELLANEOUS NO. 1082 OF 2007

**MWANIKI GITAU & CO. ADVOCATES .....PLAINTIFF**

**VERSUS**

**MOHAMED MOHAMOUN SAYED AHMED .....DEFENDANT**

**R U L I N G**

Application dated 17/4/08 brought under **Order 50 rule 17 Civil Procedure Code, Section 3A and 63 (e) Civil Procedure Code Cap.21** seeking orders to set aside certificate of taxation made on 8/2/2008 and that advocates/client Bill of Costs dated 29/6/2007 be taxed afresh. The ground for seeking these orders is that the Taxing Officer proceeded to tax the bill while only one party was in attendance.

On the outset this application is brought under the wrong provisions. See **HCC (Milimani) Misc. Application No.37/2002 – Mereka & Co. Advocates vs. National Bank.**

**“A decision on taxation can only be interfered with by the High Court under the provisions of sub-paragraph (2) of paragraph 11 of the Advocates Remuneration Order.”**

The procedure is to apply to taxing master for reasons for her decision and thereafter to make reference to High Court. The Taxing Officer is empowered to tax bills ex parte see rule 14 There is no provision for filing written submissions under the Advocates Remuneration Order but a mere procedural lapse which has caused no prejudice cannot lead to a reversal of taxation.

The provisions invoked **Order 50 rule 17 Civil Procedure Code, Section 3A and 63 (e) of Civil Procedure Act** are not appropriate for this application. In **Behan and Okero Advocates vs. APA Insurance Co. Ltd. – Kisumu HCC No.8 of 2005** it was held that **Section 63 (e)** of the Act is a supplemental provision in its nature and procedure is not appropriate provision under which application can be brought.

Again **Section 3A** reserves the inherent powers of court and cannot be invoked where there are provisions under which the application can be brought. **Order 50 rule 17** simply says that the court may set aside ex parte orders.

As stated above the procedure of challenging decisions of the Taxing Officer must be made under Advocates Remuneration Order. This application is therefore incompetent and the same is hereby dismissed with costs to the respondent.

It is so ordered.

**DATED and DELIVERED** at Nairobi this 29<sup>th</sup> day of September 2008.

**JOYCE N. KHAMINWA**

**JUDGE**