

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

Civil Appeal 207 of 2006

RUSTAM HIRA ADVOCATES.....APPELLANT

VERSUS

SULEIMAN RAHEMTULLA OMAR &

ZAKINA SULEIMAN OMAR.....RESPONDENTS

R U L I N G

Rustam Hira (hereinafter referred to as the appellant) has appealed against the ruling of the Deputy Registrar delivered on 31st March, 2006. In the ruling subject of the appeal, the Deputy Registrar upheld a preliminary objection raised by the respondents Suleiman Rahemtulla Omar and Zakina Suleiman Omar, and struck out the appellant's bill of costs filed on the 1st September, 2005, on the grounds that there was no order for costs in the consent order recorded by the parties. The respondents have now raised a preliminary objection to the appeal on the grounds that the appeal contravenes paragraph 11 of the Advocates Remuneration Order which requires parties dissatisfied by orders made by the a Taxing Officer to come to court by way of a reference and not by way of an appeal.

The appellant urges the court to overrule the preliminary objection contending that paragraph 11 of the Advocates Remuneration Order is only applicable where a Taxing Officer has taxed a bill and a certificate of cost has been issued and the aggrieved party is disputing some of the items which had been taxed.

Counsel for the appellant submitted that paragraph 11 of the Advocates Remuneration Order is not applicable because the appellant's bill was not taxed but was struck out on a preliminary objection. It was further submitted that the duty of the Taxing Officer is to tax a bill and where there are other issues raised he cannot deal with the matter as a Taxing Officer but deals with the matter as the Deputy Registrar whose ruling is subject to appeal. The court was therefore urged to overrule the preliminary objection.

Paragraph 11 of the Advocates Remuneration Order upon which the preliminary objection is hinged states as follows: -

"11(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith 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.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be

made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired."

It is apparent from the above that paragraph 11 of the Advocates Remuneration Order comes into play only where the Taxing Officer has given a decision taxing the bill of costs and a party is dissatisfied with that taxation. Paragraph 11 clearly sets out the steps to be followed in raising an objection to such taxation through a reference to a judge in chambers. In this case, no taxation was actually done as the appellant's bill of costs was struck out. The appellant is therefore not objecting to the taxation on specific items but is aggrieved by the striking out of his bill of costs. In my considered view, such a complaint cannot be brought by way of a reference under paragraph 11. Accordingly, I overrule the preliminary objection and order that the hearing of the appeal may proceed.

Orders accordingly.

Dated and delivered this 20th day of November, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Were for the appellant

Ms Busienei H/B for Ojienda for the respondent