



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

**Misc. Case 126 of 2008**

**SURJIT SINGH & MALKIAT SINGH.....APPLICANTS**

**VERSUS**

**M/S C. K. AREBA & CO ADVOCATES ..... RESPONDENT**

**RULING**

The application dated 31<sup>st</sup> July 2008 is made under Section 3A of the Civil Procedure Act and Paragraphs 7 and 13 of the Advocates Remuneration Order. The orders sought are that:-

- (a) Leave be granted to the applicant, Surjit Singh and Malkiat Singh for the taxation in this cause of costs as between advocate and client of the professional charges of the respondent in respect of all the cases listed in the 1<sup>st</sup> schedule annexed hereto.
- (b) That there be a stay of all proceedings and orders of purported taxation and purported execution thereof before or through the subordinate courts of any and all the cases listed in the 1<sup>st</sup> schedule hereto.

The grounds for the application are contained in the body of the appropriate originating motion and supported by facts contained in the supporting affidavit deposed by Surjit Singh on the 31<sup>st</sup> July 2008.

The respondent M/s C. K. Areba & Co Advocate was served with copies of the originating motion and the supporting affidavit but did not file any objection and/or reply to the application.

The affidavit of service filed herein on 10<sup>th</sup> November 2008, confirmed such service.

At the hearing of the motion, Mr. Okero appeared for the applicants and presented his arguments which were in effect a reiteration of the supporting grounds. He relied on a ruling made by Justice Tanui in Kisumu High Court Misc Civil No. 287 of 2003 M/s Siganga & Co =vs= Blue Shield Insurance and urged this court to grant the orders sought.

Paragraph 13 (1) of the Advocates (Remuneration) Order provides that:-

“The taxing officer may tax costs as between advocate and client without any order for the purposes upon the application of the advocate or upon the application of the client but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation and in such event the advocate shall not be bound by or linked to the amount of the bill rendered in summarized or block form”.

The application is made on the grounds with included that the respondent has failed and/or delayed in availing to the applicants an itemized account of his reasonable professional charges as prescribed by the Advocate (Remuneration) order and has purportedly and illegally assessed ex-parte or threatened to do so its professional charges through or before the subordinate courts in the same cause in which the applicants have been sued as defendants ( See ground six of the grounds contained in the originating motion).

In his supporting affidavit the applicant Surjit Singh has annexed a bundle of correspondence ( Annexure marked Exhibit 1) showing the respondent's demand of payments in respect of professional charges which the applicants considers exorbitant and unjustified.

The applicants contend that the respondent has no intention of complying with the provisions of the Advocates (remuneration) Order and this has led to proclamation of their assets pursuant to an illegal assessment of the respondent's professional charges by a subordinate court in Bungoma CMCC No. 460 of 2006

From the foregoing and in view of the fact that there has been no opposition of the application by the respondent, it is only fair and just that the itemized bills of costs for the case listed in the first schedule of the application be filed and taxed in this present cause.

Consequently, the application is granted in terms of both prayers (a) and (b).

Ordered accordingly.

**Dated, signed and delivered at Kisumu this 12<sup>th</sup> day of November 2008**

**J. R. KARANJA**

**JUDGE**

JRK/aao