



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

**Civil Case 222 of 2006**

**OTIENO ODEK & CO. ADVOCATES.....PLAINTIFF**

**VERSUS**

**ORBIT CHEMICAL INDUSTRIES LTD .....DEFENDANT**

**RULING**

The Applicant has come to this Court under Section 51 (2) of the Advocates Act and Order 50 Rule 1 of the Civil Procedure Rules seeking orders that Judgment be entered for the Applicant against the Respondent for the sum of Kshs 468,527.80 plus interest thereon at the rate of 14% from 15<sup>th</sup> November, 2006 until payment in full being the sum certified to be due by the Deputy Registrar of this Honourable Court on 7<sup>th</sup> December, 2006 and that costs be provided for.

The grounds in support are that the applicant has in his favour a certificate of taxation issued by the Deputy Registrar of this Court dated 7<sup>th</sup> December, 2006. The said certificate certified the amount payable to the applicant to be the sum of Ksh s468,527.80. That there is no application pending in any forum to alter, vary or set aside the said order by the taxing Master of this Court, hence the need for the said amount to be allowed as prayed. The orders sought are necessary to convert the taxation order into a decree so that the same can be enforced. That the same has been demanded from the Respondents who have declined to pay the same.

The Respondents on the other hand have submitted that they are not objecting to payment of the taxed costs save that Kshs 200,000.00 paid to the applicant by another sister or brother company of the Respondent towards reduction of costs has not been taken into consideration and asks the court to take cognizance of the said sum, reduce it by 200,000.00 and then issue an order for judgment for the remaining balance which they are willing to pay. They rely on Order 24 Rule 6 of the Civil Procedure Rules.

In response Counsel for the applicant has stated that the Civil Procedure Rules do not apply to the situation prevailing here. what the court has to rely on solely is the Advocates Remuneration Act Cap.16 Laws of Kenya

does not empower the Court to vary the taxing Masters' taxing order unless its intervention is sought under the rules.

In view of the submissions, set out above the simple task of this Court is to determine whether jurisdiction exists either under the Civil Procedure Rules or the Advocates Act Cap.16 Laws of Kenya to enable this Court to take cognizance of the 200,000.00 which the Respondent says should have been considered and then reduce the amount claimed by that sum and order the resultant balance to be paid out.

Order 24 Rule 6 of the Civil Procedure Rules deals with the compromise of a suit by agreement. Herein the court is dealing with a taxation order. I therefore agree with the applicants Counsel that order 24 rule 6 Civil Procedure Rules does not apply to the matters under consideration.

Section 51 (2) under which the application has been brought states "***the certificate of the taxing officer***

***by whom any bill has been taxed shall, unless it is set aside or altered by the court be final as to the amount of the costs covered there by and the court may make such order in relation there to as it thinks fit including in a case where the retainer is not disputed or order that judgment be entered for the sum certified to be due with costs”***

The use of the word “shall” in the said section makes the provision mandatory for this court to enforce the order as presented in the certificate of taxation. It is therefore correctly submitted by the Applicant’s Counsel, that the respondents should have availed themselves of the provisions of Rules 11 and 12 of the Advocates Remuneration Rules. Under rule 11 the aggrieved party has a right to object to taxation on any item in the bill of costs. The objection is to be directed to the same taxing officer. The objection is to ask the taxing officer to give reasons for the amount allowed on the items objected to. The objection is to be presented within 14 days from the date of the making of the order objected to.

The second step under Rule 11 is that after reasons have been given by the taxing officer in terms of Rule 11(1), if the objecting party is dissatisfied with the reasons given, the objector has to apply to a judge in chambers for a second opinion within 14 days from the date of receipt of the said reasons.

The 3<sup>rd</sup> step under Rule 11(3) is that after the judge has given his/her opinion any aggrieved party can appeal to the Court of appeal with the leave of the Judge.

Applying the above provisions to the facts of this application it is clear that the Respondent did not avail itself of that procedure. In the circumstances the matter is foreclosed and there is no way this Court can give a contrary opinion to that of the taxing Master as it has not been invoked in terms of rule 11 (2) of the Advocates Remuneration Rules.

The second avenue for intervention arises under Rule 12 of the said Rules where reference is made to the High Court by consent of both parties. There is no such reference by consent.

For the reasons given this court has no jurisdiction to interfere with the order of the taxing officer as presented. It has no alternative but to allow the amount claimed as presented, since the Respondent did not move to seek the intervention of this Court in accordance with the laid down procedure as outlined above.

The application has merit. The application dated 11.12.2006 and filed on 18<sup>th</sup> December, 2006 be and is hereby allowed as prayed with costs to the applicant.

DATED, READ AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MARCH 2007.

R.NAMBUYE

**JUDGE**