



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI**

**MISC CIVIL APPLICATION NO. 719 OF 2004**

**MBALUKA & CO. ADVOCATES .....PLAINTIFF**

**VERSUS**

**PARAMOUNT UNIVERSAL .....DEFENDANT**

**RULING**

This is a reference from an order on taxation made by the Taxing Officer on 2.3.2006 with respect to the Advocate/Client Bill of Costs lodged in court on 29.9.2004. This is the second time the client is coming before a Judge on reference. I considered the 1<sup>st</sup> reference on 16.1.2006 and allowed the same because the Taxing Officer then had committed an error of principle by applying an incorrect provision of the Advocates/Remuneration Order. I ordered a fresh taxation before a different Taxing Officer with a direction that the instructions fees be taxed in accordance with paragraph 1 of Part II of Schedule V of the said Order. I made it clear in my direction that the parties were at liberty to urge such other relevant matters as they deemed fit.

In the event the same Bill of Costs was placed before a different Taxing Officer who on 2.3.2006 taxed the Bill and allowed it at Kshs.302,470.00. When the counsels appearing went before the Taxing Officer on 17.2.2006, the day appointed for the taxation, counsel for the advocate asked the Taxing Officer “to consider the Bill and filing into court the ruling of the High Court on the reference.” Counsel for the client left the matter to the court. The Taxing Officer then fixed 2.3.2006 as the date for delivery of his ruling which ruling is referred to above.

The client was still not satisfied and by their notice dated 14.3.2006 informed the Taxing Officer that they were objecting to item 1 of the taxation. There is no doubt in my mind that that notice of objection was within the prescribed period i.e. 14 days after the decision of the Taxing Officer. The Taxing Officer was by virtue of sub rule 2 of Rule II of the Advocates (Remuneration) Order then required to “forthwith record and forward to the client the reasons for his decision.” There is no certificate or any other document exhibited by the client showing when the reasons were forwarded and/or received. There is no averment in that regard in the client’s supporting affidavit. However, the record shows that in a replying affidavit of the client filed in opposition to an application for judgment for the same costs, a letter dated 27.6.2006 from the client’s advocates addressed to the client is exhibited. Enclosed in that letter was a copy of the ruling delivered on 2.3.2006. The client was therefore aware of the ruling on the taxation being challenged by that date i.e.27.6.2006. I was not referred to any other document, letter or certificate indicating that reasons for taxation were received later than that date. Under sub rule (2) of Rule 11 aforesaid the client should have filed their reference within 14 days from the date the ruling was received. This reference was filed on 23.10.2006. It is obvious that it was filed out of time without leave of the court and that renders the application incompetent and liable to be struck out.

If I were to determine this application on merits, I would still dismiss the same. The client presented no argument before the Taxing Officer when the Bill in question came up for consideration before the said Taxing Officer. I have carefully perused the said ruling. The Taxing Officer referred to my earlier ruling on the first taxation and noted the directions I had given. Indeed the client in this application expressly acknowledges in ground (c) that the Taxing Officer directed himself to the correct Schedule. The complaint appears to be that the Taxing Officer erred in awarding a much higher figure than the one originally awarded by the 1<sup>st</sup> Taxing Officer and in treating the matter as complex.

In his considered Ruling the Learned Taxing Officer found as follows:-

**“... the instructions involved the perusal of several voluminous documents including the directions Harbour Help (K) Ltd., resolution promissory notes guarantee and indemnity debenture (21 pages), charge (32 pages), the value of the matter – Kshs.24,328,510.20.**

**Complexity and the surrounding circumstances, and noting that the sum was fully realized, though after a short time”. He then added: “I would in my discretion allow Kshs.240,000.00 for instructions fees.”**

To my mind the Taxing Officer’s considerations cannot be faulted. I detect no error of principle. The Taxing Officer took into account all the relevant factors. He did not arrive at the sum complained of in a perfunctory manner. I do not find the sum so inordinately high as to suggest an error of principle. Kuloba, J. in his Judicial Hints on Civil Procedure says:

**“A Judge will not substitute what he considers to be the proper figure for that allowed by the taxing officer unless in the Judge’s view the sum allowed by the taxing officer is outside reasonable limits so as to be manifestly excessive or inadequate.”**

I agree with those views as can be gleaned from my findings above. In the end even if the client’s reference was competent I would still have rejected it. For now however it is struck out.

The advocates will have the costs of the reference. Orders accordingly.

**DATED and DELIVERED at NAIROBI this 24<sup>th</sup> day of May 2007.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:- Bichanga for the client.

**Bichanga:**

I apply for a certified copy of this ruling and a stay of execution for 30 days.

**Court:**

Certified copy of this ruling to be supplied to the client on payment of the requisite fees.

There will also be stay of execution for 30 days.

**F. AZANGALALA**

**JUDGE**

**24/5/07**