



REPUBLIC OF KENYA

HIGH COURT OF AT NAIROBI (MILIMANI LAW COURTS)

Misc Appli 1020 of 2006

PETER O. NGOGE

T/A O. P. NGOGE & ASSOCIATES.....APPLICANT/ADVOCATE

VERSUS

MARY MUTAI..... RESPONDENT/CLIENT

RULING

I have before me an application by Mary Mutai (hereinafter called “**the client**”) whereby an order is sought to enlarge the time fixed by Rule 11 (1) of the Advocates (Remuneration) Order to enable her file a notice of objection to the decision of the taxing officer dated 27.10.06. The application is expressed to be brought under Rule 11 (4) of the Advocates Act.

The application is made on the following grounds:-

- (1) That the applicant was never served with the bill of costs and notice of taxation personally or at all.
- (2) That the applicant only received the Advocate/Client bill of costs through post when the taxation had already proceeded.
- (3) That the applicant has come to court without any undue delay.
- (4) That the applicant is desirous of challenging the taxed amount through a reference.

The application is supported by an affidavit sworn by the client. She has deponed inter alia that on or about 23.12.2006, she received through her mail box a bill of costs date 18.9.2006 and a notice of taxation for 27.10.2006 and immediately contacted her advocates who informed her that an affidavit of service filed indicated that she had been served personally with the bill of costs and the notice of taxation at her

shop along Accra Road on LR. No.209/2455/12. She has further deponed that she was not so served and the affidavit of service is a false return. She has also deponed that she is desirous of challenging the taxation through a reference and it is only fair and just that she be granted leave to file a notice of objection to the taxation out of time.

The application is opposed and there is a replying affidavit sworn by the advocate (Peter O. Ngoge hereinafter called "**the advocate**"). In a nutshell the advocate objects to the application upon the main grounds that he indeed personally served the client with both the bill of costs and the notice of taxation and by registered mail and the client's application is meant to delay and or prolong the case in order to deny him the fruits of his labour.

The application was canvassed before me on 25.5.2007 by Mr. Kenyatta, Learned counsel for the advocate and Mr. Muchoki Learned counsel for the client. The Learned counsels recited the averments in the respective affidavits of their clients and briefly explained their clients' respective positions.

I have considered the application, the affidavits of both the client and the advocate. I have also considered the submissions of the Learned counsels appearing. Having done so, I take the following view of the matter.

The primary issue for determination is that of service of the bill of costs and the notice of taxation. The client maintains that she was not served. She discredits the position taken by the advocate and wonders why the advocate would send her the same documents by post when he had personally served her.

The advocate on the other hand maintains that he served the client personally and by registered mail to avoid a denial of service as has now happened. There is therefore conflict in affidavit evidence which could only have been resolved by the cross examination of both the advocate and the client. However neither offered to be cross-examined. The issue of service therefore remains inconclusive. The inconclusiveness is heightened by the deposition by the advocate that the client he served was one Elizabeth Wakaba who is not the client.

In the premises, I hold that service of the bill of costs and the notice of taxation remains unproven. This is an appropriate case to extend the time as prayed. The clients application dated 18.1.2007 is therefore allowed as prayed. The client may give notice of objection to the decision of the taxing officer given on 27.10.2006 within the next seven (7) days from the date hereon. Costs to be in the reference.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JULY 2007.

F. AZANGALALA

JUDGE

Read in the presence of:

Mureithi holding brief for Muchoki for the client.

F. AZANGALALA

JUDGE

16/7/07