



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Misc. Appli. 39 of 2005**

**OGONJI & TIEGO ADVOCATES.....ORIGINAL APPLICANT/  
RESPONDENT**

**VERSUS**

**SAMUEL KINYUA MUTUGI.....ORIGINAL  
RESPONDENT/APPLICANT**

**R U L I N G**

Delay in the preparation and delivery of this ruling has been occasioned by my recent illness, hospitalization recuperation. The delay is regretted.

This is an application for an order to enlarge time to enable the Applicant to file his objection to the decision by the taxing officer of 13<sup>th</sup> April, 2005 out of time. It is expressed to be brought under Order 49 rule 5 of the Civil Procedure Rules, sections 3A and 9 (b) of the Civil Procedure Act and paragraph 11 of the Advocates (Remuneration) Order. The grounds for the application as stated on the face thereof are:-

1. That immediately after the decision of the taxing officer the Applicant applied for copies of the proceedings and the ruling to enable him to file his objection.
2. That the court is yet to supply the proceedings and ruling to the Applicant.
3. That the Applicant may be prejudiced unless the order sought is granted.
4. That the Respondent may not be prejudiced if the order is granted.

There is a supporting affidavit sworn by the Applicant. The application is opposed. Only one ground is stated in the grounds of opposition dated 16<sup>th</sup> July, 2005. That ground is that the application is incompetent, misconceived and an abuse of the court process. There is no replying affidavit filed.

I have considered the submissions of the learned counsels appearing. I must state at the outset that the Advocates (Remuneration) Order is by itself a complete code of law governing matters of taxation of costs between party and party and between advocate and client. The Order, which runs to some 79 paragraphs, does not provide for importation of the Civil Procedure Rules. Rule 5 of Order 49 of the Civil Procedure Rules has therefore been wrongly invoked. Section 9 of the Civil Procedure Act makes provision regarding foreign judgments. It has no operation to the present matter. Section 3A of the Civil Procedure Act saves the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The inherent powers of the court can be properly invoked in appropriate cases even in matters of taxation.

Under paragraph 11 (1) of the Advocates (Remuneration) Order any party objecting to the decision of the taxing officer must give notice in writing within 14 days after the decision of the taxing officer of the items of taxation to which he objects. Sub-paragraph (4) of the same paragraph gives the court power in its discretion and by order to enlarge the time fixed by sub-paragraph (1) referred to above. So, the court

has power to grant the order sought by the Applicant should it deem it fit and just to do so. There is thus no substance in the ground of opposition that the application is incompetent, misconceived and an abuse of the process of the court. I must determine the application on merit.

The Applicant has explained the delay in his supporting affidavit. There is no replying affidavit; the averments of fact in the supporting affidavit have thus not been challenged. I am satisfied with the reasons given for the delay. I hold that it is in the interests of justice that the Applicant be accorded an opportunity to challenge the taxation. I will therefore grant the application. The Applicant may file the necessary notice to the taxing officer under paragraph 11 (1) of the Advocates (Remuneration) Order within fourteen (14) days of delivery of this ruling. Costs of the application shall be in the reference against taxation to be filed. If no such reference is eventually filed, costs of the application shall be to the Original Applicant/Respondent. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 22<sup>ND</sup> DAY OF MARCH, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 24<sup>TH</sup> DAY OF MARCH, 2006.**