



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**MISC. APPL. NO. 571, 524 & 525 OF 2004**

**C.W. WANJIHIA & COMPANY, ADVOCATES.....  
....APPLICANT**

**VERSUS**

**A P A INSURANCE LIMITED (Formerly APOLLO INSURANCE COMPANY LTD).....RESPONDENT**

.....

**MISC. APPL. NO. 524 OF 2004**

**C.W. WANJIHIA & COMPANY, ADVOCATES.....  
....APPLICANT**

**VERSUS**

**A P A INSURANCE LIMITED (Formerly APOLLO INSURANCE COMPANY LTD)  
.....RESPONDENT**

.....

**MISC. APPL. NO. 525 OF 2004**

**C.W. WANJIHIA & COMPANY, ADVOCATES.....  
.....APPLICANT**

**VERSUS**

**A P A INSURANCE LIMITED (Formerly APOLLO INSURANCE COMPANY LTD)  
.....RESPONDENT**

**CONSOLIDATED RULING**

Delay in the preparation and delivery of this ruling has been occasioned by my recent illness,

hospitalization and recuperation. The delay is regretted.

These three applications (all being by chamber summons dated 12<sup>th</sup> April, 2005) are similar. They are all said to be brought under paragraph 11 (2) and (4) of the Advocates (Remuneration) Order. They seek two main orders. The first one is that the court be pleased to enlarge the time within which the Applicant may file objections to the decisions of the taxing officer made, respectively, on 11<sup>th</sup> February, 2005 (dismissing the Advocates bill of costs dated 28<sup>th</sup> July, 2004 in Misc. Appl. No. 571 of 2004), and on 5<sup>th</sup> January, 2005 (striking out the Applicant's bill of costs dated 15<sup>th</sup> July 2004 in the other two applications). The second order sought is that the court be pleased to set a time within which the Applicant may file his objection. I heard the application in Misc. Appl. No. 571 of 2004 on 5<sup>th</sup> July, 2005, and the other two on the following day, 6<sup>th</sup> July, 2005, separately. The learned counsels repeated their arguments made in Misc. Appl. No. 571 of 2004. Since the parties are the same, and the applications are similar, I have decided to prepare one consolidated ruling. The affidavits sworn in support of the applications are similar. They set out the chronological background of the applications and also reasons for the delay.

The Respondent has opposed all the applications upon similar grounds as set out in the grounds of opposition filed. These grounds may be paraphrased as follows:-

1. **That the applications do not lie in law.**
2. **That the applications are frivolous, vexatious and/or otherwise an abuse of the process of the court.**
3. **That the applications otherwise lack merit.**

There is an affidavit sworn in support of each statement of grounds of opposition; I will regard them as replying affidavits. The Respondent has set out its submissions in opposition to the applications in these affidavits.

I have considered the respective submissions of the learned counsels appearing. As already stated the applications have been brought under paragraph 11 (2) and (4) of the Advocates (Remuneration) Order. Sub-paragraph (2) states as follows:-

***“(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen (14) from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”***

And sub-paragraph (4) provides:-

***“(4) The High Court shall have power in its discretion by order to enlarge the time fixed by sub-paragraph (1) or sub-paragraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to any other interested party not less than three clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”***

The first ground of objection to the application, that is, that the applications do not lie in law, has no merit. The court has jurisdiction under sub-paragraph (4) of paragraph 11 quoted above to enlarge the time limited by sub-paragraph (1) of the same paragraph within which a party objecting to the decision of the taxing officer may give notice in writing to the taxing officer of the items of taxation to which he objects. Likewise the court has the power to enlarge the time limited by sub-paragraph (2) of paragraph 11 within which to file a chamber summons in challenge to taxation after receipt of the reasons for the taxing officer's decision.

The second ground of objection is that the applications are frivolous, vexatious and/or otherwise an abuse of the process of the court. This is hardly so. All the three bills of costs of the Applicant were either dismissed or struck out by the taxing officer. By seeking to challenge those decisions of the taxing officer the Applicant cannot be said to be vexatious; nor can his present applications be said to be frivolous or an abuse of the process of the court.

There has been delay on the part of the Applicant in coming to court with the present applications. Learned counsel for the Applicant submitted that the delay has been adequately explained in the supporting affidavits, and that the same is not inordinate. He also submitted that the intended references are arguable. It appears that the taxing officer's decisions were delivered without notice to the Applicant, and it took him some time to know about them. At any rate, after the decisions came to his notice, he has acted without undue delay in bringing the present applications. I am of the view that the Respondent stands to suffer no prejudice should I grant the orders sought.

In the circumstances, I will allow the applications, but with costs to the Respondent. The Applicant may file his notices of objection to the decisions of the taxing officer within fourteen (14) days of delivery of this ruling. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 1<sup>st</sup> DAY OF MARCH, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 3<sup>RD</sup> DAY OF MARCH, 2006.**