



**REPUBLIC OF KENYA**

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

**Misc Civ Appli 24 , 17, 18, 19, 20 & 22 of 2006**

**AS CONSOLIDATED WITH**

**MISCELLANEOUS CIVIL APPLICATION NOS. 17/2006, 18/2006, 19/2006, 20/2006  
and 22/2006**

**WANGA & COMPANY ADVOCATES ..... APPLICANT**

**VERSUS**

**APA INSURANCE CO. LIMITED ..... RESPONDENT**

**RULING**

The Taxing Master of this court delivered her ruling in the taxation of Advocate/Client Bills of costs the above mention matters on 4/4/2006.

It would appear that she had taken the submissions in one of the files, after which she proceeded to tax each bill in the individual files.

Wanga and Company Advocates who were the applicants then, and who I shall now refer to as “the respondents’, appear to have been dissatisfied with the taxing master’s decision for they filed their Notices of Objection under paragraph 11 of the Advocates Remuneration Order (‘the Order’) on 18/4/2006. The said par. stipulates that:

*“(1) Should any party object to the decision of*

*the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.*

*(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 days 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.*

*(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.*

*(4) The High Court shall power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber*

*summons upon giving to every 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."*

In the meantime, APA Insurance Company Limited, which I shall now refer to as ("the company") had sent its notice in which it requested the taxing master to give the reasons for her decision in the subject matters, as it desired to lodge a reference. It also relied on the aforementioned par. 11 of the Order. In her short reply of 2/5/2006, the taxing master informed the company that "*the bills were taxed to scale as per Advocates Remuneration Order 1997.*" She also intimated that she had exercised her discretion in the matters.

The company which still feels dissatisfied with the reply has now moved this court in this consolidated matter, which comprises of seven files, and it seeks the following orders:

- *a stay of execution in regard to the aforementioned orders of 4/4/2006.*
- *that this court be pleased to review and set aside the said order of 4/4/2006.*
- *that the court be pleased to dismiss the party and party bill of costs for want of proof.*

Apart from the fact that the company is dissatisfied with the taxing master's rulings, this application is otherwise based on the several grounds, the main one being that though the company had requested the taxing master to determine whether it had actually instructed the respondent to act for it, an issue which it considered pertinent, to be determined before proceeding to taxation, the master did not do deal with the said issue at all.

It was the submission of Mr. Maondo, who appeared for the company that his client had not instructed the respondent in the subject matters, in which case it was imperative that the respondent establish that they had been instructed.

Mr. Omondi, who appeared for the respondents, who oppose this application, was of the view that the application is incompetent as it was filed in contravention of par. 11 of the Order.

I have looked at par. 11 (1) of the Order and it seems to me that all that a party who wishes to object to the taxing masters decision is required to do, is to give notice in writing to the taxing officer of the items of taxation to which he objects, which as stated earlier the company did within the stipulated time, after which it preferred this application. I am of the view that this application is properly before me.

Be that as it may, I have taken the submissions of both counsel into account, and it is common ground that of the six cases which were presented for taxation, one emanated from Nakuru, while the other emanated from Migori, and two from Winam. Only two had been filed within the master's area of jurisdiction in Eldoret, yet there is no valid reason why she proceeded to tax bills for matters which fell outside her area of jurisdiction. Further to that, there is no evidence that the respective court files were availed before her to enable her verify the pertinent issues, which the company had raised.

Contrary to Mr. Omondi's submissions I find that the company denied having instructed the respondents. It was therefore incumbent upon the master to determine whether the company had actually instructed the respondents, before proceeding with the matter. Indeed she had the discretion to delve into the matter and to call for evidence if need be, as empowered under par. 13 A of the Order which stipulates that, "*for the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, papers and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.*"

In my humble opinion, in a matter of the taxation of the Advocate/client bill, the issue of instructions goes to the very root of such taxation and where the party denies having instructed the Advocates, the

issue must be resolved before the taxing master proceeds to tax the bills. Failure to do so amounted to grave injustice to the company.

Having found as I do, I do set aside the rulings in all the six files, and do in the circumstances refer the matters back to the taxing master for hearing and determination.

Each party shall bear the costs of this application.

Dated and delivered at Eldoret this 30<sup>th</sup> day of May 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Mwinamo for the applicant

Mr. Omondi for the respondent