



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Cause 839 of 2005

**KULECHO & CO. ADVOCATES.....
.....APPLICANT**

VERSUS

**JOEL KIEMA MUTINDA1ST
RESPONDENT**

**VIOLET NDANU MUTINDA2ND
RESPONDENT**

R U L I N G

The advocate's client bill of costs was taxed on 11th November 2005 and the ruling thereof was delivered on 16th December 2005.

The respondent client have moved this court with a chamber summons dated 11th July 2006, brought under Rule 11 (1) and (4) of the Advocates (Remuneration) order and sections 3 and 3A of the Civil Procedure Act.

The clients seeks that the court does enlarger time for the client to file their objection and/or reference to the taxation.

The clients supports the said application with the grounds that the delay in filing objection or a reference was unforeseeable circumstances which saw their advocate Nzomo Mutinda taken ill and admitted in hospital; that as a consequence of the absence of their said advocate the bill of costs was not challenged at taxation; that to allow the bill of costs to be for the amount taxed would be to punish the said client for mistakes of their advocates; that the taxed costs were excessive and that it is in the interest of justice that the taxation is re-visited. In support of the above submissions client annexed a copy of the doctor's report, which confirmed that Nzomo Mutinda was admitted at Kenyatta National Hospital on 25th February 2006 after having been referred from Nairobi West hospital.

The advocate opposed the application firstly on the basis that the client had filed a similar application dated 22nd March 2006 which had been filed by the advocate Nzomo Mutinda & Company which seeks similar orders as are sought by the present application. The presence of that application, the advocate argued, was an abuse of the court process.

The advocate further stated that the clients were served with Notice of Taxation and indeed obtained a counsel to represent them, that is Nzomo Mutinda. That on the said Nzomo Mutinda failing to attend

court on the day of taxation, taxation proceeded in his absence, once the taxing officer was satisfied with service. That the taxing officer in exercise of her discretion taxed the bill as drawn. That the taxation having proceeded ex parte and since, to date, it is unchallenged there was no reason or basis of a reference being filed.

In response counsel for the clients stated that there is no hindrance in one filing a reference whether or not, the party participated in the taxation. In regard to the application dated 22nd March 2006, client's counsel stated that the same was filed by a person who was not a holder of a practising certificate and having been filed by such unqualified person the same was a nullity.

The clients in coming to court have invoked the courts to exercise its discretion. The court indeed has wide discretion to make orders as may be necessary for the ends of justice. This is a typical case for the exercise of that discretion, why do I say so. The advocate Nzomo Mutinda who had been instructed to act for the clients fell sick. The doctor's report stated that Mr Mutinda was transferred to Kenyatta National hospital in February 2006, from Nairobi West Hospital. It does seem that Mr Mutinda may have been sick before being transferred to Kenyatta National Hospital and I find that the client's contention that Mr Mutinda was sick even as the bill of costs came up for taxation was not contravened by the advocate. I find that accordingly that this is a fit and proper case for this court to exercise its discretion in favour of the clients.

I am also satisfied that the application dated 22.3.06 is a nullity having been filed by an advocate who did not hold a valid practising certificate.

The orders of this court are: -

- (1) That the period of filing a reference for respondent is hereby enlarged by 14 days from the date of receipt of the taxing officer's reason on the taxation of 16th December 2005.**
- (2) That the Respondent shall request for reasons of taxation within 7 days from today's date.**
- (3) If the Respondent does not request for reasons of taxation as stated in (2) above the applicant may proceed to execute for his costs.**
- (4) That the costs of the Notice of Motion dated 11th July 2006 shall be in the cause.**

MARY KASANGO

JUDGE

Dated and delivered this 22nd September 2006.

MARY KASANGO

JUDGE