



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Misc Civil Appli 155 of 2000

N. IKUA & CO. ADVOCATES.....APPLICANT

VERSUS

TIMSALES LTD.....RESPONDENT

RULING

MS N. Ikua & Co. Advocates, the applicants in this matter filed an advocates client bill of costs for taxation against Timsales Limited in Misc. Civil Application No. 155 of 2000.

The bill of costs came up for taxation and by a ruling of the taxing officer dated 20th June, 2002 the bill of costs was struck off with costs to the respondent for reasons that the taxing officer noted that there was nothing in the file to show that the advocate had done anything for the client.

It is on the basis of that ruling that the applicant filed the Chamber Summons dated 19th July, 2002 whereby he had raised the following issues:-

- 1. The taxing officer herein did not do the taxation as required by law.**
- 2. The taxing officer erred in law and principle in failing to appreciate the meaning of “instruction fees.”**
- 3. The taxing officer erred in law in failing to consider the fact that there was no objection to many items for the bill.**
- 4. (In view of the foregoing) the bill of costs be referred back to another taxing officer for taxation as required by law.**

This application was opposed by counsel for the respondent, who submitted that the proper procedure for the applicant to pursue was an appeal. If the applicant is dissatisfied with the order by the taxing officer striking off the entire bill of costs, he should have appealed because the reasons were given.

Secondly, counsel challenged the validity of this application which he submitted was filed after the period of 14 days. The reasons by taxing officer were given on 5th July, 2002 and therefore *under part 1 rule 11 (2)* of the Advocate’s remuneration order this application ought to have been filed in the High Court on 19th July, 2002 and the fact that it was filed on 23rd July, 2002 the same is incurably defective.

I have considered this application, the procedure to be followed when a party is objecting to a decision on taxation is provided for under part 1 rule II of the Advocate's remuneration order. I find that the taxing officer gave reasons for his decision to strike out the bill. *Under rule 16* the taxing officer is given the discretion to disallow costs which appear to him to have been incurred or increased through over caution, negligence or mistake.

In this case the taxing officer found that no work was undertaken by the advocate. The applicant argued that the instruction fee ought to have been taxed, however in this case, it would seem that instructions fees being a static item that is charged only once was already awarded to the previous counsel and that is the reason why the taxing officer struck off the bill.

See case of *Joreth Ltd. -Vs- Kigano & Associate unreported CA No. 66 of 1999 Nairobi*. This also raises the pertinent issue on whether the appropriate procedure should not have been an appeal.

In view of the provisions of the advocate's remuneration order, I am of the view that any decision, if arising out of a taxing officers order of taxation the procedure *under part 1 rule II (2)* is the correct procedure. However I find that this application was not filed within the stipulated period of 14 days from the receipt of the reasons. The applicant did not seek leave to extend the period. Within which to file the *Chamber summons under rule 11(4) of the order*.

For the foregoing reasons, the application is incompetent and I hereby dismiss it with costs to the respondent.

It is so ordered

Ruling read and signed on 3rd November, 2006

MARTHA KOOME

JUDGE