



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. APPLICATION NO. 272 OF 2003

ARTHUR INGUTYA & CO. ADVOCATES.....APPLICANT

VERSUS

CHRISTINE WANGARE GACHEGE.....1ST RESPONDENT

ELIZABETH WANJIRA EVANS.....2ND RESPONDENT

PETER NJOGU GACHEGE.....3RD RESPONDENT

MARY WANJIKU GACHEGE.....4TH RESPONDENT

RULING

Elizabeth Wanjira Evans has made an application under the provisions of **Rule 11 (1), (2) (3) and (4) of the Advocates (Remuneration Order)** seeking the following orders:-

- (i) That the time within which to file a reference be extended.
- (ii) That the taxing of the Applicant/Advocate bill of costs be stayed pending the hearing and determination of the reference.
- (iii) That the taxing master do supply the proceedings and the ruling delivered on the 28th of May 2004.
- (iv) That the order of the taxing master made on the 28th of May 2004 be reviewed and or be set aside.

The application is based on the grounds stated on the face of the application and supported by the annexed affidavit of the applicant, Elizabeth Wanjira Evans. The main complaint by the Applicant is that in spite of being aggrieved by the decision of the taxing master in disallowing a preliminary objection which had been raised by the applicant, the taxing master had not supplied the proceeding and given reason for her refusal to uphold the preliminary objection. The Respondent, Arthur Ingutya & Company Advocates filed a replying affidavit in opposition to the application. Geoffrey Maina Makone has sworn a replying affidavit in opposition to the application. The essence of the said opposition is that the Applicant had filed the present application prematurely before this court as the taxing of the Respondent's bill had not been concluded by the taxing master.

I have carefully considered the submissions made by Mr Kiburi Learned Counsel for the Applicant

and Mr Konosi, Learned Counsel for the Respondent. I have also read the pleadings filed by the parties to this application. The issue for determination by this court is whether the orders sought by the Applicant should be granted as prayed. The Applicant made her application under the provisions of Rule 11 of the Advocates (Remuneration) Order which provides 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 sub paragraph (2) may, with the leave of the Judge but not otherwise appeal to the Court of Appeal.

(4) The High Court shall have 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 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 above referred rule is clear. A party can only make a reference to the High Court after the bill of costs has been taxed by the taxing master. In the instant case, it appears that the Applicant raised a preliminary objection to the taxation, which preliminary objection was disallowed by the taxing master. Being aggrieved, the applicant filed the present reference. The Respondent has objected to this reference and has submitted that the same has been filed prematurely. I have considered the said rule in relation to the application filed by the applicant herein. With due respect to the Applicant, I agree with the Respondent. The Applicant cannot purport to file a reference to this court before the bill of costs by the Respondent has been taxed. **Rule 11(1) of the Advocates (Remuneration) Order** provides that an aggrieved party shall within fourteen days of the taxation write to the taxing master to give reasons for the taxation of the items that the aggrieved party objects to. In the present case, the taxing master has not given her reasons for rejecting the preliminary objection. Neither has she taxed the respondents bill of costs. On my evaluation of the evidence placed before me, it seems that the Applicants main complaint is that at some period during the time the Respondent acted on her behalf, the Respondent did not have a practicing certificate. If that is the position, then the Applicant ought to have objected to the items in the bill of costs that related to the period that the Respondent was not possessed of a practicing certificate and not to file a preliminary objection to scuttle the entire taxation by the taxing master.

In the premises, I find no merit with the reference presented to this court by the Applicant. The same was prematurely filed. The taxing master was not given an opportunity to assess the Respondent’s bill of costs to enable the Applicant to have capacity to refer the case to this court. The reference filed is therefore dismissed with costs to the Respondent.

Further, I hereby order that the bill of costs filed by the Respondent be taxed by the Deputy Registrar of this court. If the Applicant has objection to any item, she is at liberty to raise the same. Should she be aggrieved by the decision of the taxing master, she now knows what to do.

DATED at NAKURU this 21st day of January 2005.

L. KIMARU

JUDGE