

REPUBLIC OF KENYA

**IN THE HIGH COURT
AT NAIROBI**

MISC. APPLICATION NO. 328 OF 2003

SHAH & PAREKH PLAINTIFF

VERSUS

APOLLO INSURANCE CO. LTD. DEFENDANT

RULING

The Applicant herein seeks orders under a Chamber Summons dated 1st April 2004 as follows:

1. That the Honourable Court be pleased to set aside the taxing masters' decision on the taxation delivered on 8th October 2003.
2. That this Honourable Court be pleased to refer the matter back to the taxing master with directions on the proper manner of taxation.
3. That costs of this application be provided for.

The Applicants complains that the decision of the taxing master has no legal basis, and that the same was arrived at after undue "excess and abuse" of discretion and that the taxing master failed in not disclosing the schedule under which the Bill was taxed. I find the latter argument nonsensical since the Remuneration Order is very clear that that costs of proceedings in the High Court will ordinarily be awarded under Schedule VI.

The Respondents have opposed this application on the grounds that the same is either premature or statute barred given the provisions of the Advocates Remuneration Rules II (1) and II (2). The Applicants reply to this is that they filed the application since reasons requested for from the Registrar were delayed. I agree with the Respondents that this sort of application is not the correct procedure where reasons are delayed. Under Rule II (4) this Court is empowered to enlarge the time prescribed under Rule II but on application by the objector (applicant) and with appropriate notice to the Respondent.

(other parties). Until reasons are given it appears the judge will ordinarily have no jurisdiction to entertain an application such as this one. I find that the Ruling delivered on 8th October 2003 does not help this Court much in dealing with the objection filed herein. However as the Applicants never asked the Court for enlargement to obtain the reasons behind the taxation I find that the application is improperly brought and order sought cannot therefore be granted. The same is dismissed with n order as to costs.

Dated and Delivered at Nairobi this 21st day of January 2005.

M.G. Mugo

Judge

In the presence of:

Mr. Mutua present for Mereka & Company Advocates for the Applicant

Mr. Tiego present for Shah & Parekh Advocates for the Respondent