



Civil Practice and Procedure

- *Do the provisions of paragraph 62 A of the Advocates (Remuneration) order apply to advocate client's bill of costs.*

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
MISC. CAUSE NO. 244 OF 2004

IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA

and

**IN THE MATTER OF THE TAXATION OF COSTS BETWEEN ADVOCATE
AND CLIENT**

MWAURA & WACHIRA ADVOCATES.....ADVOCATE

VERSUS

JOHN NDUATI KARIUKI T/A JOHESTER MERCHANTS.....CLIENT

R U L I N G

The client in the bill for taxation raised preliminary objection to the taxation of the bill of costs dated 7th April 2004 on the grounds that: -

1. That the bill of costs herein is premature and is offensive to the provisions of paragraph 62 A of the Advocates (Remuneration) Order;
2. That HCCC NO. 626 OF 2003, the subject of this taxation was for reasons of non attendance by counsel dismissed with costs on 3rd May 2004 and as such the advocate is guilty of professional negligence and is thus not entitled to costs or to taxation;
3. That the suit having been dismissed for non-attendance, there is no basis for the costs, as the same would amount to double jeopardy to the client.

The basis upon which a preliminary objection can be raised is purely on a point of law and on facts that are not in dispute.

Considering the above the objection No. 2 and 3 fail the test because they are reliant on facts, which firstly are not before the court, and secondly facts that were vehemently disputed by the advocate with bill. Since they fail the test I will not consider those two objections in this ruling.

That then leaves the objection No. 1 which is an objection on a point of law.

The client's counsel's argued that under the provisions paragraph 62A of the Advocates (Remuneration) Order the Advocate cannot tax the bill of costs until the suit has been concluded.

To appreciate this ruling it is important to give the background of this matter. The Advocate was instructed by the client to file suit which he did namely HCCC NO. 626 OF 2003 MILIMANI JOHN NDUATI KARIUKI T.A JOHESTER MERCHANT V NATIONAL BANK OF KENYA LTD. The advocate obtain in favour of the client interlocutory injunction. There was a lull in the proceedings until 3rd April 2004 when the plaintiff instructed another counsel Mwaniki Gachoka advocates to take over the conduct of that matter from the Advocate. On 8th April 2004 the Advocate filed a client's bill of costs, which the client's counsel has raised an objection to. The client's counsel relied on the case MISC APPLICATION 151 OF 2001 (MILIMANI) MACHIRA & COMPANY ADVOCATES V ARTHUR MAGUGU ANOTHER, where Hon Justice Mwera in regard to paragraph 62A of the Advocates (Remuneration) order found that when there has been a change of advocates the former advocate was not entitled to seek costs from his former client until the conclusion of the litigation. The judge held: -

“Unless there was agreement for costs whereby each step service rendered may be calculated, in general litigation, it will be the last advocate to present the bill of costs when the matter is finally settled for himself and all those that preceded him. It appears that that is what the Rules Committee had in mind when it published paragraph 62 A Advocates (Remuneration) Order and one can add that is not a practice of this court for each separate advocate when changed, to draw up his/her bill of costs and have it taxed even as the cause is still going on.”

The client's counsel argued that the advocate cannot tax his client/advocates bill of costs, until the suit is concluded and his costs can only be claimed on his behalf by the counsel on record. He was further heard to argue that the Advocate is not entitled to any costs.

The advocate opposed the objection and submitted that the taxing master, in taxing the bill will address only the work undertaken by the advocate. The advocate relied on the case MACHIRA AND C. ADVOCATES V MAGUGU (2002) EA page 428. Hon Justice Ringera disagreed with the holding of the Hon Justice Mwera in the case relied by the client. The finding of Justice Ringera on Paragraph 62A was **“Paragraph 62A of the Advocates (Remuneration) Order applies to the taxation of party and party costs and the object thereof is to avoid loading a party against whom an order for costs has been made with excessive fees as a result of change of advocates by the adverse party in the court of Litigation.”**

The finding of Justice Ringera is one, which I wholly subscribe to accept. It is clear from paragraph 62A that was directed to party party costs and not to advocate, clients costs. That paragraph does not therefore relate to the present bill of costs and that limb of the preliminary objection is rejected.

The order of this court is that the clients preliminary objection dated 30th July 2003 is dismissed with costs to the Advocate.

Dated and delivered at NAIROBI this 19th day of May 2005.

MARY KASANGO

JUDGE