REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 259 OF 2001

ERASTUS MUTEGI NJAGI ……………. APPELLANT

VERSUS

JULIUS MBAKA THAARA …………… RESPONDENT

RULING

This is an application stated to be brought under Sections 3 A and 63 (e) of the Civil Procedure Act (Cap 21). In it, the Appellant seeks, in the main, to set aside the decision of the taxing officer on the Party and Party costs which was made on 11th June, 2004.

The application was based on two grounds, namely:

> ***(a) That the taxation was unlawful and in breach of the provisions of paragraph 72 of the Advocates (Remuneration) Order.***
>
> ***(b) That the quantum of costs was exorbitant and unjustified.***

If I may, let me deal with the second ground first, as it applies both to law and procedure.

As was pointed out by Mr Kurauka for the Respondent, a party who objects to the findings of a taxing officer is required under Rule 11 of the Advocates (Remuneration) Order to file a reference before a Judge of this Court by following the procedure set out under that Rule. That was not done in this case and, in my view, that precluded the Appellant from seeking to challenge the taxing officer's findings on the quantum of costs.

I will now go to the first ground upon which the Appellant sought to challenge the decision on taxation. But before I make any findings of my own, I would like to first set out the provisions of Rule 72 of the Advocates (Remuneration) Order which is said to have been breached. It provides as follows:

> ***"When a bill of costs has been lodged for taxation … the registrar shall, upon payment of the prescribed fee, issue to the party lodging the bill a notice of the date and time … fixed for taxation thereof and shall also issue a copy of such notice, accompanied by a copy of the bill, to each advocate and other person whose name is endorsed on the bill as entitled to receive notice of the taxation thereof …"***

In this case, the objection was not that the Appellant was not aware of the date when the taxation was done but that the notice for taxation was issued by the Respondent's Advocate rather than by the Registrar of the Court. Indeed there is evidence on record that the Appellant's Advocate was served a Hearing Notice of the date for taxation about one month before the scheduled date (See Affidavit of Service of Leonard Visanya sworn on 10th June, 2004 and filed in court on 11th June, 2004).

According to Mr Amolo for the Appellant, the taxation was a nullity as it proceeded on an illegal notice in the circumstances set out above.

In my view, Mr Amolo was being unreasonably pedantic. He was given adequate notice by his counterpart in the matter that taxation of the Bill of Costs, a copy of which had already been served on him, was to be done on a particular date, and he chose not to attend court on the appointed date to safeguard his client's interests. That was irresponsible of him. If he thought the notice was illegal, as he

now suggests, he should have appeared before the court and pointed it out then. For my part, I agree with Mr Kurauka that the provisions of Rule 72 under reference apply at the initial stage when the Bill of Cost is lodged. There is nothing in that Rule which precludes on Advocate from issuing a Hearing Notice in a situation like this where the taxation had been adjourned and a new hearing date fixed by the court in the absence of the contending party or his Advocate. I agree further that it appears that the Appellant is only interested in delaying the conclusion of this matter unnecessarily and he must be prevented from abusing the process of this court in doing so.

I, therefore, do not find any merit in the Appellant's application dated 4th April, 2005 and I

hereby dismiss it with costs.

Dated and delivered at Nairobi this 4th day of May, 2005.

ALNASHIR VISRAM

JUDGE