



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA NAKURU**

**CIVIL DIVISION**

**MISC CIV APPLI 395 OF 2005**

**KIMATTA & CO ADVOCATES .....APPLICANT**

**VERSUS**

**JOYCE WAMBUI JARVIS .....RESPONDENT**

**RULING**

The respondent argued two preliminary grounds of objection to the applicant's application dated 17<sup>th</sup> June, 2005. In the said application, the applicant prayed that:

“THAT this Honourable court be pleased to enlarge time within which the applicant can file a reference to the High Court arising out of the Taxation of the Advocate-client Bill of costs by the Deputy Registrar Of this court on 5<sup>th</sup> October, 1999, in Nakuru High Court Misc. Application No.176 of 1999 (KIMATTA & COMPANY ADVOCATES VS JOYCE WAMBUI JARVIS.”

In the first ground of preliminary objection, Mr. Macharia Karanja argued that the application was misconceived, incompetent and embarrassing and bad in law in that it ought to have been made in Nakuru High Court Misc. Application No.176 of 1999.

The second ground was that there was no objection and there had never been any to the decision of the taxing master and as such there was no room for reference and the application was therefore a non starter.

Mr. Karanja Mbugua for the applicant opposed the preliminary objections and as far as the first one was concerned, he submitted that there was no prejudice that had been occasioned to the respondent by the applicant's act of filing a separate application instead of having filed the same within the original matter in which the taxation was done. He argued that there was no express provision stating that such an application ought to be filed in the original file. He sought to rely on two decisions:

**(1) *FIRST AMERICAN BANK OF KENYA LTD VS***

***GULAB P. SHAH & OTHERS, HCCC NO.2255***

***OF 2000*** and

**(2) *SANKALE OLE KANTAI T/A KANTAI & CO***

## **ADVOCATES VS JOHN NGANGA NJENGA**

**Misc. Application No.102 of 2001** (unreported)

On the second limb of the preliminary objection, Mr. Karanja said that the taxing master gave the reasons for her taxation without any prompting and so the applicant did not require to write to the taxing master to make any objection.

I have carefully considered the submissions that were advanced by both counsel. It is not in dispute that under paragraph 11(4) of the Advocates Remuneration Order, this court has power to enlarge time within which an applicant can file a reference to the High Court arising out of a taxation. A proper reading of the entire paragraph 11 reveals that that such an application as envisaged under sub-paragraph (4) ought to be filed in the same cause under which the taxation was done.

I say so because under sub-paragraph (1) the party who objects to the decision of the taxing officer is given 14 days after the decision to give notice in writing to the taxing officer of the items of taxation which he objects to and then under sub-paragraph (2) the taxing officer records and forwards to the objector the reasons for his decision and the objector may, within 14 days from the date of receipt of the reasons apply to a Judge by Chamber Summons, setting out the grounds of his objection. Then we now come to sub-paragraph (4) by which a party who has not been able to comply with the time limits as set out by sub-paragraphs 1 or 2 can file an application for extension of time.

It does not require to be stated that the application under sub-paragraph (4) has to be made in the same file or cause under which the objection was made in the first place, it is logical. The application has to be made in the cause under which the taxation was done so that the Judge, in exercising his discretion one way or the other can see when the objection as required under paragraph 11(1) was made and the sequence of other events that followed thereafter in order to determine whether there are good grounds upon which an extension of time can be allowed under paragraph 11(4).

I therefore hold that it was improper for the applicant to commence this application by way of a different miscellaneous civil application. The authorities which were cited by Mr. Karanja Mbugua cannot assist the applicant at all. If anything they fortify the first preliminary objection.

As regards the second ground of objection, the same cannot be determined unless Nakuru High Court Miscellaneous Civil Application No.176 of 1999 is before the court so that I can peruse the same and determine whether there was any objection or not. That argument should not have been raised as a preliminary ground of objection. I over rule it.

In view of my finding above with regard to the first ground of preliminary objection, I strike out the applicant's application by way of chamber summons dated 17<sup>th</sup> June, 2005. The applicant shall bear the costs of the said application.

DATED, SIGNED & DELIVERED AT Nakuru this 26th day of July, 2005.

D. MUSINGA

JUDGE