



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
Misc Appli 711 of 2003

MUCHANGI NDUATI & CO. ADVOCATESAPPLICANTS

VERSUS

JOHN CHOMBA RESPONDNT

RULING

The Applicant in this matter seeks to strike out the application of the Respondent who seeks to set aside the order of taxation in favour of the Applicant granted on the 18.7.2004.

In this case the Notice of Taxation was served on Mr. Chebii on the 19.5.2005 a time when Mr. Chebii was on record. At that date another firm of Advocates was on record. This is the only evidence before the court. It appears therefore the notice of termination was not served.

Rule 72 of the Advocates (Remuneration) Order (The Rules) is in the following terms: -

“When a bill of costs has been lodged for taxation as aforesaid, the registrar, upon payment of the prescribed fee, issue to the party lodging the bill a notice of the date and time (being not less than five days after the issue of such notice, unless a shorter time is specially allowed by the registrar) 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:

Provided that where any person so entitled to receive notice cannot be found at his last known address for service the taxing officer may in his discretion by order in writing dispense with service of notice upon such person.”

There is no explanation why the advocate on record at that time was not served.

Mr. Chebii says the proper procedure is under O.50 rule 17, which requires the court to set aside the orders made ex-parte.

Mr. Nduati on the other hand says this is not the procedure which should be by way of an objection brought under Rule 11(1) of the Rules which states: -

“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 item of taxation to which he objects”

These Rules deals with different situations Order 50 rule 17 deals with the setting aside of an ex-parte order. Rule 11 relates to objection taken to particular items dealt with by a taxing officer.

In this case the problem relates to the bill having been taxed ex-parte.

I incline to the view that this is an order, which is capable of being set aside since a bill has been taxed ex-parte. It is a general principle of law and procedure that where anything has been done ex-parte it can be set aside, if the circumstance merit, to, allow a person to be heard who had been excluded. This applies to taxation as well as any other procedure.

In the result as no proper service of the Notice of taxation had been effected I set aside the order of taxation and order that the taxation of the Applicant's bill be taxed before the taxing officer as soon as a date can be given. The costs will go to the Respondent.

Dated and delivered at Nairobi this 15th day of July, 2005

P.J. RANSELY

JUDGE