

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA, NAIROBI

COMMERCIAL DIVISION, MILIMANI

Misc Application 817 of 2004

NYAMOGO & NYAMOGO APPLICANT

VERSUS

BERNARD WACHIRA GAITA RESPONDENT

RULING

The application before the court is dated 26th, May 2005, and filed in court on the same day. It is a reference against a decision of the taxing officer, and the same is brought under Paragraph 11(2) and (3) of the Advocates Remuneration Order.

The application is made by way of a chamber summons –ex parte. Asked by the court why he was making the application ex parte, learned counsel for the applicant replied that he was entitled to proceed ex parte. Paragraph 11 of the requisite Order is in the following words –

"(1) 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 items of taxation to which he objects.

"(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection."

Contrary to the position taken by counsel, this application cannot proceed ex parte. The relevant rule makes it obligatory for the application to be "**served on all the parties concerned**". This procedure has not been observed in this matter. The application is therefore incompetent at this stage and is accordingly struck out.

Leave to appeal is hereby granted.

Dated and delivered at Nairobi this 1st day of August 2005.

L NJAGI

JUDGE