

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

MISC APPLICATION 92 OF 2004

OCHANDA ONGURU t/a

OCHANDA ONGURU & CO. ADVOCATES.....ADVOCATE/RESPONDENT

VERSUS

JOSEPH NJUGUNA NGAE.....CLIENT/APPLICANT

RULING

The client has moved this court by Notice of Motion brought under Rule 11 of the Advocates (Remuneration) Order.

The client seeks two orders; firstly that he be granted enlargement of time to file an objection under Rule 11 of the Advocates (Remuneration) Order; secondly that he be allowed to withdraw an earlier application dated 28th May 2005. The advocate filed an advocates client bill of cost on 24th February 2004. The advocate for the client was served with that bill and notice of taxation on 7th may 2004. The bill was taxed on 24th February 2004 and the ruling on taxation was delivered on 14th May 2004.

The advocate for the client failed to attend taxation. The then counsel for the client filed an application dated 28th May 2004. The client now states that that application was filed out of time allowed under Rule 11 and was filed before reasons were supplied by the taxing master. The client by the present applicant wishes to withdraw that application. There was no opposition, from the advocate with bill, to that prayer, and the court sees no reason, why the order, should not be granted for such withdrawal.

In regard to the prayer for extension of time to lodge an objection, the advocate with the bill objected to the same. The client in submission stated that the delay in filing the objection was due to his earlier advocate's error. He argued that he ought not to be punished for the errors of his former advocate.

The advocate with the bill opposed this prayer on the basis of the provision of section 51 (a) of the Advocate's Act. He submitted that under this section unless advocate' taxed costs are set aside or altered the client's application cannot lie. In response the client's advocate submitted that, that section does not apply to the present application, because it only applied where an advocate was seeking to recover his costs. As I begin to consider the submissions made before me it is necessary to have the provisions of section 51 (2) of the Advocates Act in focus. That section provides: - "The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as the amount of the costs covered thereby....."

The said section falls with part IX of the Advocates Act, which part deals with the remuneration of Advocate's. The Advocate with the bill obtained a certificate of taxation, hereof, dated 27th May 2004. That being the case the client is not entitled to object to the costs, the subject of that taxation, for indeed section 51 (2) recognizes those costs as final as to the amount. The client having failed to set aside the certificate of taxation, cannot challenge the amount taxed. The final orders of the court are as follows: -

(1) That the client is hereby granted leave to withdraw the application filed 2nd June 2004 and dated 28th May 2004 and costs thereof are awarded to the Advocated with the bill.

(2) The plaintiff's prayer No. 1 in Notice of Motion dated 8th July 2005, seeking extension of time to lodge objection, is hereby dismissed with costs to the advocate with bill.

Dated and delivered this 31st October 2005.

MARY KASANGO

JUDGE