

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CIVIL APPEAL NO. 50 OF 2000

JOSEPH K. KAVUWA.....APPELLANT

VERSUS

PATRICK K. KAVUWA.....RESPONDENT

R U L I N G

The application dated 4.8.2003 is filed by the appellant/applicant under order 44 R (1) CPR and S3A CPA seeking orders that there be stay of execution of courts order of taxation dated 11.6.2003 and the said taxation order be set aside or in the alternative the said order be reviewed and for costs of the application. Before the application it came up for hearing counsel for respondent filed a notice of Preliminary Objection. The objection is to the effect that under paragraph 11 of the advocates remuneration order a taxation order can only be challenged by first giving notice in writing to the taxing officer within 14 days and the taxing officer then records his reasons for his decision and the objector within 14 days from receipt of the reasons, applies to the Judge by way of chamber summons. This the applicant has not done and hence the application before court is premature. It is also argued that it is the court that made the order that should be asked to set aside or review the order and 3rdly that under order 44 (1) CPR it is courts judgement that can be reviewed not an order.

The applicant on the other side contends that the application is properly before court as the taxation was invalid and unlawful and so the application is not made under advocates act but under CPR because they are not conceding to the taxation. The application by appellant is brought under order 44 CPR. Under that order an application for review can only be made to the Judge who made the order. In this case it is the Deputy Registrar who made the order and the application should have been made to the Deputy Registrar not the High court. Further more I do agree with objection raised, that under paragraph 11 of advocates remuneration Act any objection has to be made to the Deputy Registrar first before the matter can be referred to the Judge. Application is therefore made prematurely. Section 3A Civil Procedure Act can only be invoked when there is no specific provisions governing the present application. From the foregoing I do agree with objection. Objection is upheld and application dated 4.8.2003 is hereby struck out with costs to respondent.

Dated, read and delivered at Machakos this 28th day of January, 2004.

R. WENDOH

JUDGE