



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

MISC. APPLICATION NO. 9 OF 2019

IN THE MATTER OF TAXATION OF AN ADVOCATE AND CLIENT BILL OF COSTS

BETWEEN

MULWA ISIKA & MUTIA ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

STEPHEN KIVANDI KAMULA.....CLIENT/RESPONDENT

RULING

1. The Chamber Summons application herein dated 9th September, 2020 arises from the Ruling of the Taxing Officer, Hon. Otieno J. dated 22nd July, 2020. The Applicant is aggrieved with the taxed costs in respect of the amended advocate and client bill of costs dated 18th March, 2020.

2. The application is supported by the affidavit of Elizabeth K. Isika sworn on 9th September, 2020. It is opposed by the Respondent through the Grounds of Opposition dated 26th October, 2020. Only the Applicant filed written submissions dated 20th November, 2020.

3. It is common ground that the Applicant was the Respondent's erstwhile Advocate having prepared and filed Makueni ELC Case No. 24 of 2018. The Applicant also prepared and filed an application for injunction as well as submissions thereof in the said suit.

4. The Bill of Costs was taxed under the provisions of the Advocates (Remuneration) (Amendment) Order, 2014. The Applicant sought instruction fees charged under Item 1 at Kshs. 300,000/=. Under Item 1, the Taxing Officer taxed off Kshs. 220,000/= and awarded Kshs. 80,000/=. In total, the bill was taxed at Kshs. 105,590/=. The amount taxed off was Kshs. 252,890/=.

5. Aggrieved by the Ruling, the Applicant filed a Notice of Objection on 28th July, 2020 contending that the instruction fees were taxed at an amount contrary to what has been provided in the Advocates (Remuneration) Order, 2014.

6. In her reasoning, the Taxing Officer relied on the Court of Appeal decision in **Joreth Ltd –Vs- Kigano & Associates Civil Appeal No. 66 of 1999 (unreported)** for assessment of the proper instruction fees. Under paragraph 8 and 9, the Taxing Officer proceeded to observe as follows:

“I have in that regard borne in mind the nature of the dispute herein, the complexity of issues, the value of the subject matter and the amount of work invested by the Applicant for the duration it was seized of instructions to act for the Respondent. It is my finding that the sum of Kshs. 80,000/= is sufficient instruction fees in the circumstances.”

7. In the Chamber Summons application hereof, the Applicant has sought for the following Orders:

i) That the Honourable Court grants leave to file the Objection of Taxation as per the Ruling dated 22nd July, 2020.

ii) That the Honourable Judge do proceed and review the Bill of Costs filed by the Applicant herein in terms of Item 1 (Instruction fees).

iii) That costs of this application be in the cause.

8. From the application, the deposition, the grounds of opposition and the submissions filed, I shall proceed to determine one issue which is: -

- Whether there is valid reference form the Taxing Officer's Ruling before this Court.

9. The Applicant submitted that this Court is vested with jurisdiction to hear the application and to interfere with the Taxing Officer's exercise of judicial discretion under Rule 11(2) of the Advocates (Remuneration) Order, 2014. It is further submitted that this Court has jurisdiction to order that the Taxing Officer hears the bill afresh, refer it to a different Taxing Officer or review the said decision.

10. The Respondent has opposed the application on grounds that the application is misconceived, bad in law, fatally defective and an abuse of the court process. The Respondent has also argued that the Court can only interfere with the Taxing Officer's discretion through a proper reference and the application as filed is not such a reference.

11. Rule 11 of the Advocates (Remuneration) Order, 2014 outlines the appropriate steps to take when filing a reference against a taxing officer's decision. Rule 11(1) requires the aggrieved party to file a notice of objection within fourteen (14) days of the decision outlining the specific items which are being objected.

12. Rule 11(2) requires the aggrieved party to file the reference by way of chamber summons within fourteen (14) days of receipt of reasons from the taxing officer of the specific items that were objected. The chamber summons shall then be served on the parties concerned setting out the grounds for objection.

13. On a *prima facie* basis, the application herein does not comply with Rule 11(2). In so far as the decision of the Taxing Officer was made on 22nd July, 2020, the reference ought to have been filed on 20th August, 2020 or thereabouts. The application was filed on 11th September, 2020 clearly outside the statutory timelines.

14. The argument by the Applicant that no reasons were given by the Taxing Officer for the item it has objected to within 14 days of filing the Notice of objection is nothing but a veiled attempt to shift fault. I do not agree that the Ruling did not give reasons for why it took the decision to tax off the instruction fees from what was presented before the Taxing Officer. Indeed, the Applicant has conceded at paragraph 7 of the Supporting affidavit that she filed the application out of time.

15. Needless to say, the Applicant has not applied under Rule 11(4) of the Advocates (Remuneration) Order, 2014 for enlargement of time for filing of a reference. I cannot, therefore, enter into discourse on the substance and merits of the application.

16. For the above reasons, I find the application dated 9th September, 2020 is fatally defective and I accordingly dismiss it with being costs in the cause.

Signed, dated and delivered via email at Makueni this 26th day of January, 2021.

.....

MBOGO C.G.

JUDGE

Court Assistant: Mr. G. Kwemboi.