



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL COURTS**

**MISC. CIVIL CASE NO. 599 OF 2001**

**JAMES C. CHEBET ..... PLAINTIFF**

**VERSUS**

**SAVINGS & LOAN KENYA LTD. .... DEFENDANT**

**R U L I N G**

By this Chamber Summons application brought pursuant to paragraph 11(2) of the Advocates (Remuneration) Order and Section 3A of the Civil Procedure Act, Savings & Loan Kenya Limited (the Applicant) seeks to set aside;

(a) The taxation of the Respondents Bill of costs made on 12.2.2002,

(b) the Ruling of the taxing officer dated 29.11.2001 and the

(c) the Respondents Notice of Motion dated 24.10.2001.

The application is supported by an affidavit sworn on 25.2.2002 by the applicants Manager at its Salama House Branch and is based on the contention that the Respondent firm which purported to file the Bill of Costs for taxation before the taxing officer had not in the first place received any instruction from the applicant to act for it in connection with the matter. For that reason, the applicant asserts that the taxing officer erred in taxing the Respondent alleged bill against it.

Although the Respondent firm of Advocates M/S C.J. Chebet & Co. Advocates have filed grounds of opposition and a Replying Affidavit in which they attempt to challenge the applicant's contention, in my view their stand is wholly discredited by the facts on record and both in law and in fact their contention has no merit.

Briefly the facts of the matter are that by a letter dated 16.2.1998 the applicant instructed the firm M/S Kipkenda Chebet & Co. Advocates to act for it in upstamping a charge in its favour so as to protect its interest adequately. When those instructions were given the firm of M/S Kipkenda Chebet & Co. Company Advocate consisted of two principal partners namely, Mr. Stephen Kipkenda Kiplagat and Mr. Chebet James Chepkoiywa. However, subsequent to the receipt of the instructions, the said firm split into two, upon which one the two partners Mr. Chebet James Chepkoiywa formed a new firm under the name C.J. Chebet & Co. Advocates. It is this firm which has attempted to recover professional fees from the applicant through the Bill of Costs, which the taxing officer, taxed as aforesaid.

It is in my view clear from the foregoing facts that the firm of C.J. Chebet & Co. Advocates was not a party to the contract between the applicant and the firm of Kipkenda Chebet & Co. Advocates and consequently its purported Bill of Costs was null and void and could not form the basis of a valid taxation. Accordingly, the taxation done on 12.2.02 was a nullity.

For the above reasons the application is allowed as prayed with costs to the applicant.

Dated at Nairobi this 10th day of May, 2002.

**T. MBALUTO**

**JUDGE**