



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO. 9 OF 2000**

**TETU COFFEE GROWERS CO-OPERATIVE SOCIETY LTD.....PLAINTIFF**

**-VERSUS**

**SICHANGI & COMPANY ADVOCATES.....DEFENDANT**

**RULING**

The applicant is asking for orders that there be stay of payment of the Advocates taxed bill of costs for Sh.6,965,347.05 and that the taxation in HCCC No. 226 of 1999 Nyeri be set aside so that it will be conducted de novo by another Deputy Registrar. He also asks for enlargement of time for giving notice of objection to the taxing master.

This application was filed in Nairobi during vacation under certificate of urgency because there was no Judge in Nyeri at the time.

On 11.1.2000 I gave a stay and ordered that the Nyeri High Court Civil No. 226 of 1999 file be brought to Nairobi for the Inter-parties hearing.

The application is mainly based on the ground that the source of notification of Taxation upon the applicant was improper and unreliable and the taxing master did not use the powers confirmed to him by rules 13A and 16 of the Advocates (Remuneration) Order.

The application is opposed on the grounds that the delay in filing this application is not explained and there is not justification for enlarging the time for giving notice. It is also contended that there is in force an order by Hon. Justice Juma of 18.11.99 directing the applicant to pay the taxed sum. In the supporting affidavit to the application Mr. Mwai who is the chairman of the plaintiff depones that the plaintiff was not served with the notice of taxation. The return of service by the process server Mr.Thuku says that the service was effected on the Secretary/Manager, Mr. Sammy Ruahara on the 26.10.99. The Chairman in paragraph 14 of the supporting affidavit says that Mr. Ruhara had been seconded to the Society by the District Co-operative Union and was sacked in December same year for some offences.

The process server says in paragraph 4 of the affidavit that Mr. Ruhara confirmed to him that he would hand over the Notice of Taxation to the Chairman. From what he says it means that the person he meant to serve was the Chairman on behalf of the Defendant. He says that he peeped through the door and confirmed the Chairman who was known to him was in the Board room. He only confirmed the presence of the Chairman in the Board room but he did not confirm that the person he gave the summons to hand over to the Chairman actually did so as he did not wait to see whether that happened. The Chairman in paragraph 14 of his supporting affidavit is suggesting that the person who was entrusted with the duty of handing over the notice could have purposely withheld the notice. This is indeed a possibility and the

process server should have seen this possibility instead of dealing with the service so casually as he did. He could have served the Chairman personally with a little effort instead of peeping through the door.

Under Section 28 of the Co-operative Society Act, when a society is registered it becomes a body corporate with all the privileges of such a body. My reading of this Section is that Service of Summons and notices on the Society would be effected according to the procedure applicable to a Company Limited. The procedure for serving a company with notices or summons does not admit the notice to be handed over to someone who would in turn hand it over to the Chairman. I therefore hold the service of the Notice of Taxation on the Society was not proper.

Having found that the Service of Notice was not proper, there will be no need to consider the question of delay on the part of the applicant raised by the respondent.

Mr. Iseme for the respondent raised the point that there is an order by Hon. Justice J.V. Juma directing that the respondent be paid the money as taxed and that this court will be sitting like an Appeal Court if it hears this application. The order issued by Justice J.V. Juma reads:

“ (ii) That the advocates’ costs of Ksh.6,972,246.05 or such sum of as may be taxed herein be paid by the plaintiff or defendant from the proceeds of the sale of the coffee above referred to or on priority basis.

(iii) That all acts that may be done by any party herein with intent to defeat this charge ordered herein be declared void.”

The emphasis of the order is that the Respondent is to be paid such sum as may be taxed herein. All the applicant is saying is that let there be proper taxation and the respondent shall be paid the taxed costs as per the order. There is no way the order as it is, will be interfered with by taxation. After the taxation the order will be executed.

The applicant who is an advocate is entitled to his fees for the work he did and there is no dispute about that, but justice must be seen to have been done. It will not be seen to have been done if the order for taxation obtained through an ex parte taxation is hurriedly executed by the use of technicalities used to bar any challenge to it. There should be no short cuts to it and the applicant should avoid to appear to employ short cuts at the expense of justice.

The application is allowed in terms of prayers 3 & 4 of the notice of Motion.

After taxation there will be execution to implement the payment of the sum taxed in accordance with the High Court Order granted by Hon. Justice Juma dated the 5th November, 1999. Costs of this application shall be in course.

Dated and delivered this 29th day of February, 2000.

KASANGA MULWA

JUDGE