

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC. APPLICATION NO. 68 OF 2016

MURI MWANIKI & WAMITI ADVOCATES.....APPLICANT

VERSUS

KIFILE DACHE GUBO.....1ST RESPONDENT

AFRICAN BANKING CORPORATION LIMITED.....2ND RESPONDENT

RULING

1. Before me for determination is a chamber summons application dated 3/12/2018 through which the advocate, *Muri Mwaniki & Wamiti Advocates*, principally seek an order setting aside the taxing officer's decision delivered on 13/6/2018. The tenor and import of the impugned decision is that the taxing officer struck out the advocate's bill of costs dated 23/2/2016 on the ground that the advocate had failed to avail copies of the documents and correspondence in proof of the services rendered to aid the court undertake the taxation exercise. The application was expressed as having been brought under *Paragraph 11(2) of the Advocates (Remuneration) Order 1962*.

2. The advocate/applicant contends that the taxing officer abused her jurisdiction when she struck out the bill of costs on the basis of lack of documents without a prior request to the advocate to provide the documents as provided in Paragraph 13A of the Advocates (Remuneration) Order. They fault the taxing officer for failing to consider Paragraph 74 of the Advocates (Remuneration) Order which empowers a taxing officer to demand production of relevant documents, if necessary. Further, they faulted the taxing officer for failing to consider paragraph 69 of the Advocates (Remuneration) Order which stipulates how a bill of costs is to be prepared and which does not require annexure of supporting documents. Lastly, they fault the taxing officer for contending that the advocate had not attached relevant documents yet the advocate had availed relevant documents through the further affidavit sworn on 22/7/2016 by Mr Njuguna Muri and filed on 25/7/2016.

3. I have considered the application together with the parties responses and submissions. I have also considered the record which was before the taxing officer at the time she struck out the bill of costs. The single question falling for determination in the advocate's application dated 3/12/2018 is whether the taxing officer committed any of the alleged errors in her decision dated 13/6/2018

4. Having perused the entire record which was before the taxing officer at the time she struck out the advocate's bill of costs, this court is in agreement with the applicant that the taxing officer misdirected herself in contending that there were no supporting documents to enable her exercise her jurisdiction. I say so because, before the taxing officer was a further affidavit sworn by Njuguna Muri on 22/7/2016 and filed in court on 25/7/2016. Annexed to the said further affidavit were a bundle of no less than 6 exhibits, including various correspondence. The taxing officer's decision did not make any reference to the said documents. It is therefore probable that the further affidavit and the annexed bundle of documents escaped the attention of the taxing officer, leading to an error on part of the taxing officer. If the taxing officer saw the said further affidavit together with the annexed bundle of documents and found them inadequate for the purpose of exercising her jurisdiction, she should have invited the advocate to avail additional specified documents as opposed to striking out the advocate's bill of costs on account of unavailability of documents.

5. In their submissions before me, the 1st respondent contended that they had disputed the existence of a client-advocate relationship between them and the advocate. That, in my view, was and remains an issue to be determined by the taxing officer in exercise of her jurisdiction under the Advocates (Remuneration) Order 1962.

6. Principally on account of the further affidavit dated 22/7/2016 and filed in court on 25/7/2016, together with the bundle of annexures thereto which were before the taxing officer at the time she rendered the impugned ruling and which appear to have escaped the attention of the taxing officer, I hereby set aside the taxing officer's ruling dated 13/6/2018 in its entirety. I direct that the advocate's bill of costs dated 5/4/2016 together with any emerging issues thereon be considered by the taxing officer in accordance with the law. There shall be no order as to costs of the present application.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12TH DAY OF MAY 2021.

B M EBOSO

JUDGE

In the Presence of: -

Mr Mose holding brief for Mr Mwanzile for the Advocate

Mr Ochieng holding brief for Mr Inyangu for the 1st Respondent

Ms Achola holding brief for Mr Kithi for the 2nd Respondent

Court Assistant: June Nafula