



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**MISC APPLICATION NO. 37 OF 2018**

**NDERITU & WATURU ASSOCIATES ADVOCATES.....APPLICANT/RESPONDENT**

**VERSUS**

**PETER KAGUNYU KIRAGU.....RESPONDENT/APPLICANT**

**RULING**

The matter for determination is the Notice of Motion Application dated **17<sup>th</sup> September 2020**, by the Respondent/ Applicant seeking for orders that;

- 1. That the Ruling and orders issued by Hon. V. Kachuodho Deputy Registrar on 19<sup>th</sup> September 2019 be set aside.**
- 2. That the Certificate of Taxation dated 13<sup>th</sup> August 2020, be set aside.**
- 3. That the Advocates Bill of costs dated 19<sup>th</sup> October 2018 be taxed afresh.**
- 4. That costs of this Application be provided for.**

The Application is premised on the grounds that the Respondent /Applicant disputes the taxing officer finding on Item 1 on instructions as the only work done by the Advocate was to file an Application dated **19<sup>th</sup> October 2017**, and as such, a sum of **Kshs. 75,000/=** would be adequate. That the Respondent/ Applicant has been served with the Certificate of costs by the Applicant/ Respondent dated **13<sup>th</sup> August 2020**, on **16<sup>th</sup> September 2020**, together with an Application dated **10<sup>th</sup> September 2020**, seeking Judgment against the Respondent/ Applicant and the same is set out for hearing on **26<sup>th</sup> November 2020**.

In his Supporting Affidavit, **Prof Kiama Wangai**, averred that he is the Advocate having conduct of the matter on behalf of the Respondent. That he is aware that the Respondent disputes the taxing of item 1.

On the **22<sup>nd</sup> April 2021**, the Court directed that the said Application be canvassed by way of written submissions and in compliance with the said directives, the Respondent/ Applicant through the Law Firm of **Prof. Kiama Wangai & Company Advocates**, filed his written submissions dated **28<sup>th</sup> April 2021**, and submitted that the Advocate did not annex any evidence of detailed research done, complexity of the matter nor demonstrated any difficulty he came across. Further that the Advocate did not demonstrate the nature of the case and the Interests of the parties that made him entitled to such a high Instruction fee. That the Application for injunctive orders was a straight forward one and an amount of **Kshs. 70,0000/=** is adequate instructions fees.

The Applicant/ Respondent filed its written submissions dated **9<sup>th</sup> June 2021**, and submitted that the Respondent/ Applicant did not comply with the provision of **Rule 11 of the Advocates (Remuneration) Order** as the Ruling on taxation was delivered on **19<sup>th</sup> September 2019**, and the Notice of Objection ought to have been filed within **14 days** after the Ruling and as the same was filed on **8<sup>th</sup> October 2019**, it was way out of time. The Court was urged to find that it is irregularly on record.

It was further submitted that no one ground has been availed to state why the taxation Ruling ought to be set aside. That the averment are misleading as an Application cannot be filed in isolation without other requisite pleadings, where the Plaintiff sought for substantive final orders. That research was substantively done and the Deputy Registrar exercised her discretion in allowing the instruction fees as taxed.

The Court has carefully read and considered the Notice of Motion Application, the Affidavits, the annexures thereto, the written submissions and provisions of law and finds that the issue for determination is **whether the Respondent/ Applicant is entitled to the orders**

sought.

The Respondent/ Applicant has sought for the setting aside of the taxation of Bill of Costs by the Applicant/ Respondent. The Applicant/ Respondent has contended that the Notice of Objection filed by the Respondent/ Applicant was filed way above the required 14 days after the Ruling was delivered. **Rule 11** of the Remuneration order provides that;

*(1) Should any party that objects to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.*

*(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.*

*(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.*

*(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.*

The Court has carefully gone through the Ruling delivered by the Taxing Master. It is clear that in the said Ruling, the Taxing Master provided the reasons for her decision and therefore in any case there would not have been any use for the Notice of Objection. See the case of *Samwel Chelule Koech ....Vs... Kenya Forest Service [2021] eKLR* where the Court held that

*“ 16. I note from a copy of the ruling dated the 15<sup>th</sup> July 2020, that the Taxing Master gave reasons for his decision on the items as taxed and therefore in agreement with the Applicant herein, I do not see the need for seeking further reasons or giving notice in writing to the taxing officer for the said decisions. In my view the omission to file a notice of objection was therefore not fatal, as in any case the ruling containing the reasons was availed.”*

Therefore, it is the Court's considered view that **Rule 11 (1)** would not have been necessary in the circumstances. Having being given the reasons, then **Rule 11(2)** that requires the Objector to apply to the High Court within 14 days comes into place. The Ruling was delivered on **19<sup>th</sup> September 2019**, and the Respondent/ Applicant had **fourteen days** within which to file to the High Court and or even raise the Notice of Objection. This was not done. The Notice of Objection was filed on **8<sup>th</sup> October 2019**, way past the 14 days and that an Application to the High Court was done on **17<sup>th</sup> September 2020**, over a year since the Ruling was done. If the Respondent/Applicant is to rely on the Notice of Objection, seeking to find reasons for the said Taxation from the Taxing Master, the same was filed after the required time of 14 days. The Court does not think the same was necessary, since the reasons had been given. Further, the Application to the Court was also not done within the **14 days** timeline. Whichever way one looks at it, the **14 days** timeline was not adhered to.

**Rule 11(3)** requires a party to seek for an extension of time if the **14 days** timeline set was not adhered to. The Respondent/ Applicant failed to do the same and even after the same being raised, the Respondent/ Applicant has not sought to give any clarifications. Therefore, the Court concurs with the Applicant/ Respondent that the same is **fatal** for being out of time and therefore null and void.

Consequently the Court finds and holds that as the Notice of Objection and the Application to this Court did not adhere to timelines and therefore, the same are null and void and thus the Application dated **17<sup>th</sup> September 2020**, is hereby dismissed with costs to the Applicant/ Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THIS 24TH DAY OF SEPTEMBER, 2021**

**L. GACHERU**

**JUDGE**

**Court Assistant – Lucy**