



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. APPL. SUCC. NO. E001 OF 2021

BRUCE ODENY & CO. ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

RAVJI DEVJI CHHABHADIA

KANJI DEVJI CHHABHADIA

CHANDRAKANT DEVJI CHHABHADIA.....CLIENTS/OBJECTORS

RULING

This Ruling is on the Preliminary Objection dated 31st May 2021.

1. The Clients/Respondents have raised a preliminary objection because the Advocate/Applicant had lodged the Reference 48 days after the Taxing Officer had delivered her Ruling on taxation.
2. It is common ground that the Ruling in issue was delivered on 2nd February 2021.
3. Pursuant to the provisions of **Paragraph 11** of the **Advocates Remuneration Order**, any party who has an objection to the decision of the Taxing Officer, is required to give Notice in writing to the said Taxing Officer within 14 days from the date when the said decision is delivered.
4. The said Notice is intended to specify the items of taxation to which the party objects.
5. Upon receipt of the Notice, the Taxing Officer is obliged to immediately record and then forward to the objecting party, the reasons for the decision, on the items in respect to which the party raised an objection.
6. Upon receipt of the reasons from the Taxing Officer, the objecting party will have 14 days within which to lodge his reference.
7. The learned advocate for the Client/Respondent captured the steps in his written submissions, as follows;

“Any party therefore aggrieved by the Taxing Officer’s decision may within 14 days after the decision, give notice in writing to the Taxing Officer, of the items of taxation to which he objects.

The party, upon receipt of the Taxing Officer’s reasons for the decision, may within 14 days from receipt of reasons, apply to a Judge by Chamber Summons.”

8. In the circumstances, I find myself unable to comprehend why the Client/Respondent went ahead to calculate the 48 days from the date when the Taxing Officer delivered her ruling.
9. In this case, the Advocate/Applicant issued a Notice to the Taxing Officer within one day after the ruling was delivered. The Notice was dated 3rd February 2021.

10. Therefore, the Advocate/Applicant would have 14 days from the date when the Taxing Officer supplied her reasons for the decision she had made.

11. In order to enable the Court calculate the said period of 14 days, the Applicant ought to have provided evidence of the date when the reasons were supplied by the Taxing Officer. I have searched long and hard, but failed to trace evidence of the date when the Taxing Officer supplied reasons for the decision she made on 2nd February 2021.

12. At paragraph 8 of his supporting affidavit, Advocate Bruce O. O. Odeny deponed thus;

“THAT the decision by the taxing master, in response to our query was not released to us until today the 16th March 2021.

Annexed hereto and marked “BOO-4” is a copy of the Ruling by the Deputy Registrar.”

13. The Client/Respondent did not file any affidavit to challenge that deposition.

14. In any event, it is well settled that a Preliminary Objection is a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. That means that the preliminary objection herein was to be argued on the assumption that the Taxing Officer only provided her reasons on 16th March 2021, when she gave to the Applicant the Ruling.

15. In the result I find that the reference was filed within 14 days, when the said period is calculated from 16th March 2021.

16. Accordingly, the Applicant did not need to seek an extension of time for filing of the reference.

17. I find that the preliminary objection lacks merit, and is therefore rejected.

18. The Client/Respondent shall pay to the Advocate/Applicant the costs of the preliminary objection.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 7TH DAY OF FEBRUARY, 2022

FRED A. OCHIENG

JUDGE