



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. CIVIL APPLICATION NO. 550 OF 2012**

**WAMBEYI MAKOMERE & CO. ADVOCATES.....RESPONDENT**

**VERSUS**

**MOSES OMONDI OLOO.....APPLICANT**

**RULING**

1. The Notice of Motion by the applicant dated **4<sup>th</sup> July 2018** prays for orders that the taxation undertaken by the Deputy registrar on **14<sup>th</sup> December 2012** be set aside with all the consequential orders. That there be stay of execution of the decree thereof.
2. The supporting affidavit dated the same date faults the respondent for taxing their bill of costs dated **3<sup>rd</sup> December 2012** without service upon him. He also denied having given instructions to the respondent to act for him in a conveyancing which involved his property worth KShs 6million.
3. The respondent vide the replying affidavit of Wambeyi Makomere sworn on **25<sup>th</sup> September 2019** has denied the same and that the application was totally misconceived and legally wrong. In the preliminary objection raised he argued that the applicant has come to court via a wrong route instead of filing a reference to this court.
4. That at any rate the application is inordinately late having been brought about 5 years after the taxation had been undertaken and ruling delivered. He prayed that the same be dismissed.
5. The court has perused the record as well as the application and the rival affidavits. It is true that the issue between the two parties are advocate and client matters and or relationship. Whether the respondent was instructed or not was a matter between them.
6. At the same time the issue of taxation was undertaken by the taxing master and the applicant in his affidavit states that he was not served. That argument as clearly pointed out by the respondent was a matter to be taken out through a reference and not by way of motion.
7. **Section 11(2) of the Advocates Remuneration Order** is clear on what a party ought to do after the taxing master has completed his part, namely a notice for reasons for the decision within 14 days and thereafter file a reference. The same states that;  
  
*“Should any party object 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.”*
8. In view of the fact that the applicant has failed to comply with the procedure required the court has no option but to dismiss the application. The court does not need to discuss the issue of inordinate delay for now as the application is fatally defective.
9. The application is therefore dismissed with costs to the respondent.

**Dated signed and delivered via video link at Nakuru this 22<sup>nd</sup> day of July 2021.**

**H K CHEMITEI.**

**JUDGE**