



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
MISCELLANEOUS CIVIL CASE NO. E008 OF 2020

DANIEL ORINDO.....APPLICANT

VERSUS

AKO ADVOCATES LLP.....RESPONDENT

RULING

1. Daniel Orindo, the applicant herein moved the court by way of Chamber Summons dated 24th February, 2021. It was brought under Rule 11 (2) of the Advocates (Remuneration Order). The applicant is seeking the following orders:

- a. That the honorable court be pleased to set aside the learned taxing officer's decision of 20th January 2021 following the advocates/client bill at the kshs.107, 466.
- b. That the Honorable court for re-taxation before a different taxing officer with appropriate directions.
- c. That the costs of this application be borne by the applicant/respondent.

2. The application was premised on the following grounds:

- a. The following order issued in court on 15th February, 2021 by Hon. Gicheha PDR that the reasons of the taxing master are deemed to be contained in her ruling dated 20th January, 2021.
- b. That the learned taxing officer erred in proceeding to tax the advocate/client bill of costs without giving the client/applicant a chance to file their written submissions.
- c. That the learned taxing officer erred in principle in allowing kshs.107, 466/- in the bill of costs.
- d. That the learned taxing erred in not considering the relevant factors, hence allowing the whole amount that was excessive in the circumstances.
- e. There have been two attendances before the Honorable court for which attendances the remuneration order provides various charges.
- f. The charges in the remuneration order are statutory and although the court has judicial discretion the same must be judicious and compliant with the available laws and not arbitrary.

3. The respondent opposed the application on the following grounds:

- a. That the application is scandalous, vexatious in bad faith and an abuse of the court process.
- b. That the applicant did not formally request for the reasons of the ruling by the Deputy Registrar.
- c. That the application was argued orally and the ruling date was given in court.
- d. That the applicant has not stated which principle he alleges was breached.

e. That the contested bill was drawn in accordance with the provisions of the Advocates Remuneration Order.

4. Rule 11 (1) & (2) provides as follows:

(1) 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.

(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.

5. The ruling of the learned Deputy Registrar was delivered on 20th January, 2021. The Notice of Objection to Taxation of Costs was issued on 1st February, 2021. This was therefore within the prescribed time.

6. The applicant however did not specify the items he was challenging and for which he was seeking reasons. His was general and if he was not supplied with the reasons it was because his request was not specific. He cannot fault the Deputy Registrar for this was his making.

7. Both parties argued before the DR orally and none of them sought to file written submissions. The contention that they were denied such a chance is not borne out by the record. In the case of **Nancy Wambui Gatheru vs. Peter W Wanjere Ngugi Nairobi HCCC No. 36 of 1993** Mwera J (as he then was) on the issue of submissions expressed himself as follows:

Indeed and strictly speaking submissions are not part of the evidence in a case. Submissions, to this court's view, are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim/charge or disprove it. Once the case is closed a court may well proceed to give its judgement. There are many cases especially where parties act in person where submissions are not heard. Even some counsel may opt not to submit. So submissions are not necessarily the case.

I wholly agree with the learned judge.

8. It is trite law that the burden of proof lies on the party that alleges a fact. In the case of **East Produce (K) Limited vs. Christopher Astiado Osiro In Civil Appeal NO. 43 of 2001** where it was held that:-

It is trite law that the onus of proof is on he who alleges and in matters where negligence is alleged the position was well laid in the case of Kiema Mutuku –Vs- Kenya Cargo Hauling Services Ltd 1991 where it was held that “there is as yet no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence. [Emphasis added]

In the instant case, other than making averment that the DR erred in principle, he never pointed out which principle was breached. The application therefore lacks merit and the same is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 12TH DAY OF OCTOBER, 2021

KIARIE WAWERU KIARIE

JUDGE.