



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CIVIL APPEAL NO.34 OF 2015

BETWEEN

KENINDIA ASSURANCE CO. LTD.....APPELLANT/APPLICANT

VERSUS

BUSWAYS (K) LTD.....RESPONDENT

(Being an Appeal from the Ruling and order by P.Y Kulecho- Deputy Registrar).

RULING

1. The applicant moved the court by way of Chamber Summons dated 30th July 2019 and is seeking for the following orders:

- a) That the Ruling delivered on 22.05.2019 by Hon. P.Y Kulecho, Deputy Registrar, and Busia High Court be set aside.
- b) That the Honourable Court be pleased to re-tax or order to be remitted for re-taxation items 1,4,6,7,8,9, 10, VAT and Total Disbursements of the Respondent's Bill of Costs dated 19.02.2019.
- c) That the Honourable Court be pleased to grant such orders as it considers just and proper in the circumstances.
- d) That costs of the application be provided for.

2. The application is premised on the following grounds:

- a) That the taxing officer erred in principle in assessing the Bill of Costs dated 19.02.2019 at Kshs.1, 934477.00.
- b) That the Ruling is manifestly in error as the tabulation of the bill itself does not add up to the figure indicated while some of the figures do not have particulars of services rendered or disbursements paid for.
- c) The Ruling is at considerable variance with the provisions of the Advocates Act, the Rules thereto and the Advocates Remuneration Order.
- d) That the taxing officer erred in allowing the bill at an excessively high and exaggerated amount.
- e) That the officer completely ignored the appellant/applicant's submissions on the bill of costs dated 19.02.2019 hence arriving at a wrong conclusion.
- f) That the Ruling does not indicate the principles or basis for the amounts allowed therein. It is in the interest of justice that this application be brought before the Honourable court for just determination.

3. The application was opposed on grounds that the taxation was done in accordance of the applicable law.

4. When a party is not satisfied with taxing officer's bill, there is a laid down procedure of challenging the results. Paragraph 11 of the said Advocates (Remuneration Order) provides:

(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 applicant herein did not follow the laid down procedure and is therefore before this court irregularly.

6. In **Muriu Mungai & Co. Advocates vs. New Kenya Co-Operative Creameries Ltd Nairobi (Milimani) HCCM No. 692 of 2007**, Mwilu, J(as she was then) was of the view that:

It is mandatory for an applicant who objects to a taxation to annex the ruling, giving reasons by the taxing master supporting the taxation...Nowhere is it provided that if there be a delay in the taxing master giving reasons for taxation then a party may file a reference. Instead, rule 11 (4) gives the court power to enlarge time if the same lapses before a step needed to be done is done or taken...Under the rules the taxing officer is required forthwith, upon receipt of the notice of objection to give reasons for the decision and where they fail to do so, the thing to do is not to file a reference to the High Court...In the court's view, the applicant moved the court too soon.

More reminders should have been sent to the taxing officer for reasons or any other legal action that would have resulted in the taxing officer giving reasons to be taken to have the reasons given. Nobody else can give those reasons but the taxing officer and it has not been shown that the taxing officer is not available. And more importantly the court cannot determine the matter in the absence of the taxing officer's reasons for her decision in taxing the bill of costs as she did.

I hold the same view as the learned judge in the above cited case.

7. The application is therefore dismissed with costs.

DELIVERED and SIGNED at BUSIA this 8th Day of April, 2020

KIARIE WAWERU KIARIE

JUDGE