



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL CASE NO 1111 OF 2003 (O.S)**

**KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF**

**VERSUS**

**KAMLESH M. HAMJI PATTNI & 16 OTHERS.....DEFENDANTS**

**RULING**

1. On 10<sup>th</sup> October 2017, the Plaintiff herein filed an application dated 9<sup>th</sup> October 2017 seeking that the Bill of Costs filed by the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Defendants be struck out and that they be at liberty to file one (1) Bill of Costs. On 12<sup>th</sup> April 2018, Deputy Registrar Hon F. Rashid Deputy determined that the issue of whether or not there was duplicity of bills of costs and which items the taxing master would allow or disallow to reflect the real work done by the advocates would be determined at the time of taxing the bills of costs. The Learned Taxing Master therefore dismissed the said application with costs to the Defendants herein.
2. The Bills of Costs were subsequently placed before Deputy Registrar Hon Wandia Nyamu for taxation on 23<sup>rd</sup> January 2019. However, the Plaintiff's advocates indicated that they had sought reasons of Deputy Registrar Hon F. Rashid's decision vide their letter of 16<sup>th</sup> April 2018 but that as that time, they had not received the same and consequently, they had been unable to file a Reference under Rule 11 of the Advocates Remuneration Order.
3. On their part, the Defendants were categorical that no Reference had been filed and that in any event, the Ruling the Plaintiff had sought to file a reference against was delivered on 12<sup>th</sup> April 2018 and that the same contained reasons. It was their contention that all the Plaintiff was required to do was to apply for a certified copy of the said Ruling and hence, they had been at slumber.
4. In her Ruling delivered on 22<sup>nd</sup> February 2019, Deputy Registrar Hon Wandia Nyamu determined that the issue that had been placed before her was one of jurisdiction and she could therefore deal with the same. She thus referred the matter for determination before a judge who would hear the objections that were raised by the Plaintiff herein. That is how the parties herein found themselves before this court on 2<sup>nd</sup> May 2019 for the first time and on 6<sup>th</sup> February 2020 when they made oral submissions on the issues they had raised before the Deputy Registrar Hon Wandia Nyamu.
5. The Plaintiff submitted that there were two (2) school of thoughts relating to the question of when reasons of a taxing master could be said to have been furnished to a party who objected to the taxation to enable it file a reference under Paragraph 11 of the Advocates Remuneration Order. It stated that one school of thought took the view that if reasons were clear in a ruling, then there would be no point of seeking additional reasons and that the second school of thought was that once an aggrieved party asked for reasons, then the taxing master had to provide the same.
6. It was its contention that since it had not been given the reasons, time for it to file a reference had not started running and that it would be making an application at the appropriate time for enlargement of time to file a reference as this was a component of access to justice enshrined in the Constitution of Kenya, 2010.
7. The Defendant submitted that the only issue the taxing master had referred to this court was whether or not the Plaintiff was entitled to additional reasons and the enlargement of time to file a reference was not an issue that was before this court. It therefore urged this court to dismiss the Plaintiff's reference.
8. Right at the outset, this court agreed with the Defendant that the issue of enlargement to time to file a reference had not been placed before this court. There was also no reference that had been filed. It appeared to this court that the Taxing Master ought to have given directions as the issue that was really before her was a prayer for adjournment on the ground that the Plaintiff's reference against the decision of the previous Taxing Master had not yet been filed. It was really not a question of jurisdiction.

9. Having said so, this court determined that the Plaintiff could only have preferred an appeal against the decision of Deputy Registrar Hon F. Rashid for the reason that she had determined an application for striking out of Bills of Costs under Section 3 and 3A of the Civil Procedure Act Cap 21 (Laws of Kenya and Order 51 of the Civil Procedure Rules, 2010).

10. Order 43 Rule 1(b) of the Civil Procedure Rules provides that an appeal may be preferred against any order under Order 2 of the Civil Procedure Rules that deals with striking out of pleadings. It provides as follows:-

**An appeal shall lie as of right from the following Orders and rules under the provisions of [section 75\(1\)\(h\)](#) of the Act—**

**(b) Order 2 (pleadings generally);**

11. The Plaintiff was therefore proceeding erroneously. In addition, in the event the Plaintiff had deemed the decision as one where it could prefer a reference, it was clear that the decision of the Taxing Master was well set out. It did not need further reasons so as to file a reference, if at all.

#### **DISPOSITION**

12. Accordingly, the upshot of this court's ruling was that the Plaintiff's objection in having the Defendants' Bill of Costs taxed was not merited and the same is hereby dismissed.

13. It is hereby ordered and directed that the matter be mentioned before the Deputy Registrar High Court Milimani Law Courts Civil Division for further directions.

14. It is so ordered.

**DATED and DELIVERED at NAIROBI this 7<sup>th</sup> day of May 2020**

**J. KAMAU**

**JUDGE**