



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISCELLANEOUS CAUSE NO. 72 OF 2018**

**MOHAMED & SAMNAKAY.....PLAINTIFF**

VERSUS

**SBM BANK KENYA LIMITED**

(Formerly known as

**FIDELITY COMMERCIAL BANK LIMITED) .....CLIENT**

**R U L I N G**

1. **Mohamed & Samnakay Advocates** (the Applicants) have filed a Chamber Summons dated 23<sup>rd</sup> October 2018. By that application the Applicant seeks the following prayers:

- 1) *That this Honourable Court be pleased to set aside the Taxing Officer's decision dated the 18<sup>th</sup> May 2018 in relation to the Applicant's Bill of Costs dated the 10<sup>th</sup> February 2018 as filed in the above stated Miscellaneous Cause.*
- 2) *That this Honourable Court be pleased to re-assess the costs due to the Applicant.*
- 3) *That in the alternative this Honourable Court be pleased to remit the said Bill of Costs to a different Taxing Officer for re-assessment.*

**BACKGROUND**

2. The Applicant filed a Bill of Costs for taxation on 22<sup>nd</sup> February 2018. That Bill of Costs was taxed and Ruling delivered by the Taxing Master on 18<sup>th</sup> May 2018. In that Ruling the Taxing Master taxed off Kshs. 255,383. The bill was taxed at Kshs. 659,417. It is that Ruling that the above prayers of the Chamber Summons are directed at.

**THE CHAMBER SUMMONS**

3. **SBM Bank Kenya Limited**, the Respondent to the bill did not file any documents to oppose the Chamber Summons.

4. The Applicant supported the Chamber Summons by an affidavit of Zul Mohammed, an Advocate in the Applicant's firm. He deponed that by letter dated 19<sup>th</sup> May 2018 the Applicant requested the Taxing Master to give her reasons for her decision to tax off Kshs. 255,383. That the Applicant did not get a response from the Taxing Master and consequently wrote again to the Taxing Master letters dated 21<sup>st</sup> June 2018, 11<sup>th</sup> August 2018 and 11<sup>th</sup> September 2018. That to date the Taxing Master has failed to respond to those letters. It is on that ground the Applicant seeks the prayers in the Chamber Summons.

**ANALYSIS**

5. It is in paragraph 11 of the Advocates (Remuneration) Order that the procedure of challenging the taxation of Bill of Costs is to be found. That paragraph at, sub paragraph land 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.***

6. Let me break that paragraph down for purpose of this Ruling. The Applicant was required under paragraph 11(1) to give notice of the items of the taxation it objected to. This should have been done within fourteen days after the Taxing Master's Ruling on taxation. Paragraph 11(2) obligates the Taxing Master to give her reasons for her taxation of the items objected to.

7. In reality what the Applicant did was to write to the Taxing Master within one day of taxation (although the letter bears the Court stamp of 24<sup>th</sup> May 2018) objecting to taxing off of Kshs. 255,383 and thereby sought reasons for that taxing off. The Applicant did not set out the exact items it objected to.

8. On my perusal of the Court file I did find that the Taxing Master did by her letter dated 24<sup>th</sup> May 2018 respond to the Applicant in the following manner:

***“We refer to the letter dated 19<sup>th</sup> May, 2018.***

***The reasons requested for are in the Ruling delivered on 18<sup>th</sup> May 2018.”***

9. It follows that it is not correct for the Applicant to state that the Taxing Master failed to respond to its letters and failed to give reasons for the taxation.

10. My finding is that the Applicant's failure to follow the clearly laid down procedure under paragraph 11 renders the Chamber Summons to be incompetent. The said paragraph required the Applicant to identify, specifically, the items of the Bill of Costs it objected to their taxation. Having failed to follow that procedure the Chamber Summons fails.

**CONCLUSION**

**11. The Chamber Summons dated 23<sup>rd</sup> October 2018 for the reasons set above is dismissed. Since the Respondent did not oppose it there shall be no order as to costs to the Chamber Summons.**

**DATED, SIGNED and DELIVERED at NAIROBI this 4<sup>TH</sup> day of OCTOBER, 2019.**

**MARY KASANGO**

**JUDGE**

***Ruling Read and Delivered in Open Court in the presence of:***

Sophie..... COURT ASSISTANT

..... FOR THE ADVOCATE

..... FOR THE CLIENT