

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NUMBER 147 OF 2015

HEALTH & WATER FOUNDATION..... PLAINTIFF/RESPONDENT

VERSUS

INTERVITA ONLUS (Now known as Weworld Onlus).....DEFENDANT/APPLICANT

RULING

This is an application by way of Notice of Motion dated and filed on 20th May, 2019 seeking three substantive orders. The applicant seeks the leave of the court to enlarge time to file a reference out of time, to review and/or set aside the taxation proceedings of 28th September, 2015 and the ruling of the taxing officer delivered on 14th March, 2015 and finally that, the bill of costs dated 2nd July, 2019 be taxed afresh.

The reasons upon which the said orders are sought appear on the face of the application, alongside a supporting affidavit sworn by the advocate for the applicant. The applicant has cited Article 159 of the Constitution, Section 1A, 1B and 3A of the Civil Procedure Act, paragraph 11 of the Advocates Remuneration Order, Order 50 Rule 6 and Order 51 of the Civil Procedure rules. The respondent filed grounds of opposition and both parties have filed submissions herein.

Thus application was prompted by the ruling of the taxing officer delivered on 14th March, 2019 aforesaid. Paragraph 11 of the Advocates Remuneration Order reads as follows: -

“11 (1) Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

11 (2) the taxing officer shall forthwith record and forward to the objector the reasons for his objection on those items and the objector may within 14 days from the receipt of the reasons apply to a judge by chamber summons.”

The approach elected by the applicant herein is a departure in terms of time and also procedure. Paragraph 5 of the said Advocates Remuneration order provides as follows: -

“The High Court shall have power in its discretion by order to enlarge time fixed by sub-paragraph (1) or (2) application for such an order may be made by chamber summons.”

By combining the application seeking enlargement of time, and at the same time challenging the decision of the taxing officer, the applicant fails to appreciate that the two orders cannot be sought at the same time and presupposes that, the time to file a reference has already been enlarged. This is not a technicality that can be saved by Article 159(2) (d) of the Constitution.

The Rules of procedure do not exist in vain. They are intended to ensure orderly dispensation of justice. To wish them away would create disorder, and may be subject to abuse by litigants who may be bent on taking them for granted.

In that regard therefore, I agree that there is no competent application before this court and dismiss the same with costs to the defendant.

Dated, signed and delivered at Nairobi this 7th day of November, 2019.

A. MBOGHOLI MSAGHA

JUDGE