



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 736 OF 2017

WAIGANJO WACHIRA &

COMPANY ADVOCATES.....APPLICANT

VERSUS

PACIS INSURANCE COMPANY LIMITED.....RESPONDENT

RULING

1. The reference herein by of Chamber Summons dated 17th December, 2018 seeks orders that:

1. That the Respondent/Objector be granted an enlargement of time within which to give the Notice under Paragraph 11(1) of the Advocate (Remuneration) Order and the Respondent/Objectors Notice herein dated 24th September, 2018 and filed on 3rd October, 2018 be admitted out of time and the same be deemed to have been given in time.

2. That the decision of the Taxing Officer dated 17th September, 2018 on the Bill of Costs herein dated 20th November, 2017 be set aside and the Bill be placed before a different Taxing Officer for taxation afresh.

3. That in the alternative, the decision of the Taxing Officer dated 17th September, 2018 on the Bill of Costs herein dated 20th November, 2017 be set aside and the said Bill be taxed at such amount as this Honourable Court may deem appropriate.

4. That the costs of this Application be provided for.

2. It is stated in the grounds and the affidavit in support that the Advocate/Client Bill of Costs herein dated 20th November, 2017 which was drawn at Ksh.130,494/= was on 17th September, 2018 taxed at Ksh.118,455/=. It is contended that the Taxing Officer allowed items that are not provided for in Schedule 7 of the Advocates (Remuneration) Order. The Taxing Officer is alleged to have taxed the Bill of Costs at a higher scale which was not applicable. The delay in filing the application is blamed on non-availability of the court file and failure by the Taxing Officer to forward the reasons for the ruling in time.

3. The application is opposed as per the grounds of objection dated 15th February, 2019 which state:

1. That the applicant's application is unmeritorious, lacking in substance, incompetent, fatally defective and an abuse of the courts process.

2. That the said application is unnecessary, vexatious and therefore an abuse of the court process.

3. That the application is an afterthought and meant to delay this case.

4. I have considered the application, the response to the same and the submissions filed by the respective counsels for the parties.

5. Paragraph No. 11 of the Advocates (Remuneration) Order provides as following:

“(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 be served on all the parties concerned, setting out the grounds of his objection.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired."

6. The Notice of objection was filed on 3rd October, 2018. The same was not filed within time. The reasons for the Taxing Officer's decision are contained in the ruling dated 17th September, 2018. It is not clear from the record when the said ruling was availed to the Applicant. The Applicant has exhibited a letter dated 10th December, 2018 and received in court on 13th December, 2018 requesting for the copies of the typed ruling. There has been delay on the Applicant's side. However, this court will accept the reasons given for the delay and proceed to determine the application on merits.

7. From the written submissions filed, it is clear that both parties are in agreement that schedule 7 of the Advocates (Remuneration) Order is applicable. The instructions given are reflected in item No.1 of the Bill of Costs. The same are in respect of claim for the recovery of Ksh.296,241,80. It is not in dispute that the claim was undefended. The lower scale was therefore applicable for a claim in excess Ksh.250,000/= but not exceeding Ksh.500,000/=. The instruction fee chargeable is Ksh.28,000/= which when increased by Ksh.14,000/= comes to Ksh.42,000/=. The Taxing Officer therefore erred when after ascertaining the value of the subject matter taxed the same at Ksh.42,000/= which is the amount chargeable on the higher scale, then procedure to increase the same by half in item No.30. There was no indication in the ruling by the Taxing Officer that the matter was a complex matter that would have entitled the exercise of discretion by the Taxing Officer to increase the amount chargeable. Fees awarded under item No. 1 remains correctly taxed at Ksh.42,000/= but item No. 30 which is reflected as Ksh.22,500/= is taxed off.

8. Items No.2,4,5,6,8,10,11,12,14,15,16,17,19,20,21 and 23, relate to incidental expenses to wit receiving and perusing letters, drawing documents, making copies, perusing letters, service of process and attending the registry to file documents. The same are provided for in the notes to Schedule VII and the Taxing Officer in my view correctly awarded the same. Although the Applicant has complained about item 3 and 18, nothing was awarded by the Taxing Officer in respect of the said items.

9. Item No. 27 on the filing fee on application dated 26th November, 2013, same was awardable upon production of the receipt. There is no contention that there was no such receipt exhibited before the Taxing Officer.

10. On item No. 31, that is 16% VAT, the Taxing Officer correctly awarded the same on instruction fees. However, item No. 31 is subject to the adjustment in the figures made on the item No. 30 as aforesaid.

11. The relevant law on the 16% VAT claimed is the Value Added Tax, Cap 476, Laws of Kenya. Section 9(3) of the said Act provides that:

"In calculating the value of any services for the purposes of Subsection (1) there shall be included any incidental costs incurred by the supplier of the services in the course of making his supply to his client provided that, if the commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value."

12. In the upshot, the reference partially succeeds to the aforesaid extent. The Taxing Officer to accordingly adjust the amount taxed and issue a certificate of costs. Each party to bear own costs of this reference.

Dated, signed and delivered at Nairobi this 5th day of Dec. 2019

B.THURANIRA JADEN

JUDGE