



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERUGOYA**

**MISC. APPLICATION NO. 6 OF 2017**

**WAMBUGU KARIUKI & ASSOCIATES.....APPLICANT**

**-VERSUS-**

**INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT**

**RULING**

1. The applicants **Wambugu Kariuki & Associates** filed application under **Rule 11 (1)** and **(2)** (General Matters) of the **Advocates (Remuneration) Order** seeking orders that this Court be pleased to set aside the orders of the taxing officer/Deputy Registrar dated 14<sup>th</sup> July, 2017 which orders struck out the applicant's bill of costs dated and filed in Court on 25<sup>th</sup> April, 2017. That the applicant's bill of costs dated and filed on 25<sup>th</sup> April, 2017 be taxed afresh by the new Deputy Registrar on the basis of the parties' written submissions that parties had been ordered to file by the same Deputy Registrar (who struck out the Bill despite the filed written submissions being on record. That costs be provided for.
2. The application is based on the grounds that the taxing officer struck out the bill on her own motion alleging the bill did not conform. That there is no law that the bill of costs offends as filed before Court or at all. The application is supported by the affidavit of P.W. Kariuki sworn on 26<sup>th</sup> September, 2017. His case is that he filed a bill of costs dated 25<sup>th</sup> April, 2017 arising out of Baricho SRMCC 29 of 2012 where they represented the respondent's insured.
3. The parties were directed by the deputy Registrar Hon. J. A. Kasam to file written submissions which they did. The Deputy Registrar gave a ruling on 14<sup>th</sup> July, 2017 and held that the bill of costs did not conform to the rules and struck it out.
4. The applicant filed this reference dated 26<sup>th</sup> September, 2017 seeking to set aside the orders striking out the bill of costs. It is the applicant's case that the taxing master did not state which were the rules the bill offended or was deficient on. In addition, they stated that the record or proceedings are contradictory; it claims that all parties were absent and at the same time his brief was being held by Counsel Mr. Mwangi. That the Court on the said date insisted he ruling was to be on 21<sup>st</sup> July, 2017 but when he attended Court on the said date he was shocked to find that the ruling had been delivered on 14<sup>th</sup> July, 2017 in absence of all parties.
5. The respondent Invesco Assurance Company Limited opposed the application and filed a preliminary objection based on the ground that the application violates **Rule 11 (1)** of the **Advocates Act** and that the application is misconceived as the applicant's only recourse is by way of an appeal.

6. I have considered the application. The parties appeared before this Court on 9<sup>th</sup> November, 2017 and agreed by consent to file written submissions. The matter was to be mentioned on 14<sup>th</sup> December, 2017 to confirm filing of submissions. However, by 14<sup>th</sup> December, 2017 none of the parties had filed submissions. The applicant who was present applied to strike out the preliminary objection but the Court proceeded to fix a date for the ruling.

7. The contention by the respondent is that the application violates **Rule 11 (1) of the Advocates (Remuneration) Order** and is misconceived as the applicant's only recourse is by way of an appeal. **Rule 11 (1)** provides:

**“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.”**

The applicant vide their letter dated 24<sup>th</sup> July, 2017 stated that he needed to file a reference so as to be able to know the Rules the Bill of Costs offended because the ruling was silent on that. He did not seek to know the Rules from the taxing master but only sought for typed proceedings and ruling in order to file the said reference. The taxing master would have then been able to respond under **Rule 11 (2)** which provide as follows:

**“(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.”**

8. The letter which the applicant wrote does not amount to an objection as envisaged under the above rule. It did not require the taxing officer, the required notice and an opportunity for her to give reasons for her decision. In this case since the taxing officer gave a generalized ruling that the bill of costs did not conform to the rules, it was expected that the applicant would have given notice to the taxing officer to list the rules which the bill of costs had not complied with. The letter written to the taxing master does not amount to a notice.

9. Since the applicant wrote a letter to the taxing officer, it did not elicit a reply. He was supplied with proceeding and ruling. No reasons were given to the applicant. The Court of Appeal in the case of **Machira and Co. Advocates -V- Arthur K. Magugu and Another (2012) eKLR** held:

**“Having not specified the items objected to and sought reasons for their taxation, the Respondents notice of 1<sup>st</sup> August, 2001 was fatally defective. It follows that the Respondent's reference based on it was incompetent and we agree with counsel for the appellants that it should have been struck out.”**

10. The letter to the taxing officer by the applicant was defective. No reasons were given by the Deputy Registrar who taxed the bill. The application by the applicant by way of Chamber Summons is not properly before this Court.

11. The second consideration is whether the applicant had recourse to this Court by way of an appeal. In the case of **Machira & Co. Advocates – supra** the Court of Appeal stated:

**“With regard to advocates' bills of costs we agree with the decision of Ringera J (as he then was) in Machira vs Magugu that the Advocates Remuneration Order is a complete code which does not provide for appeals from taxing master's decisions. Rule 11 thereof provides for ventilation of grievances from such decision through references to a judge in chambers. The effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not be loosely used. Appeals require the typing of proceedings, compiling records of appeal and hearing of the same in open court.**

**Reviews, however, would require provisions akin to those in Section 80 of the Civil Procedure Act of discovery of new and important matters, errors on the face of the record and so on. In our view the Rules Committee intended to avoid all that and provide for a simple and expeditious mode of dealing with decisions on advocates' bills of costs through references under Rule 11 to a judge in Chambers.....”**

**As we have pointed out the intendment of the Rules Committee in providing for objections to bills of costs to be dealt with by references and not appeals or reviews was expedition.”**

The recourse to the applicant was to file a reference before a judge in Chambers. Be thus as it may, the applicant did not comply with **Rule 11 (1) and 2** under which he has brought this application. He did not seek reasons for the taxing officer's ruling and none were given. The reference to this Court in line with the above binding decision of the Court of Appeal is incompetent for want of a proper notice to the taxing officer and absence of reasons by the taxing master. The consequence is that the application ought to be struck out. The preliminary objection has merits. I order that the application be struck out with costs.

***Dated and delivered at Kerugoya this 1<sup>st</sup> day of March, 2018.***

**L. W. GITARI**

**JUDGE**

Read out in open Court, M/S Makavoro for Mr. Kariuki for Applicant, Respondent absent, court assistant Naomi Murage this 1<sup>st</sup> day of March, 2018.

**L. W. GITARI**

**JUDGE**

**1.3.2018**