



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI MILIMANI LAW COURTS

CIVIL DIVISION

MISC APPLICATION NO 119 OF 2015

IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA

AND

IN THE MATTER OF THE TAXATION OF COSTS

BETWEEN

MEREKA & COMPANY ADVOCATES.....APPLICANT

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....RESPONDENT

RULING

INTRODUCTION

1. The Advocates' Chamber Summons application dated on 14th September 2017 and filed on 15th September 2017 was brought pursuant to the provisions of Rule 11 (2) of the Advocates Remuneration Order and all other enabling provisions of the law. It sought the following prayers:-

- 1. THAT the decision of the Taxing Officer delivered on 18th August 2017 as far as the same related to taxation of the entire Applicant's Bill of Costs herein be and is hereby set aside.**
- 2. THAT the Honourable court be pleased to refer back the matter to the Taxing Officer for re-taxation of the entire Bill of Costs herein and with proper directions thereof.**
- 3. THAT in the alternative to prayer 2 above, the Honourable court be pleased to re-tax the said Bill of Costs herein.**
- 4. THAT the costs of this application be in the course.**

2. The Advocates' application was not supported by any affidavit. They relied on the grounds on the face of the application. They also attached several letters that had been exchanged between them and the Client herein. On its part, on 17th October 2017 the Client filed a Notice of Preliminary Objection dated 5th October 2017 in which it relied on the following grounds:-

- 1. THAT the Taxing Master's decision herein was not one of the envisaged decisions under Rule 11 (1) of Chapter 16 Laws of Kenya.**
- 2. THAT the Applicant's recourse could only be by way of an appeal.**

3. When the matter came before the court on 19th June 2018, the parties' requested that this court delivers its decision based on their respective Written Submissions which they relied upon in their entirety. This Ruling herein is therefore based on the said Written Submissions.

LEGAL ANALYSIS

4. It was evident from the Advocates' application that they had filed a Reference to challenge the decision of the Taxing Master that was delivered on 18th August 2007. A copy of the said Ruling was not placed before this court for consideration.

5. Appreciably, Rule 11 (2) of the Advocates Remuneration Order requires that an aggrieved party seek and obtain reasons why his or her decision had been dismissed by a taxing master.

6. The said Rule 11 (2) of the Advocates Remuneration Order stipulates as follows:-

“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”.

7. It was the finding and holding that the application as drafted was incompetent and incurably defective. Indeed, the court could not determine the merits or otherwise of the Reference as no reasons or documentary evidence had been attached to the Advocates' application.

8. The annexures that had been annexed to the application had no leg to stand as they were not attached to any affidavit. This omission was not a technicality within the meaning of Article 159 (2) (d) of the Constitution of Kenya, 2010 that mandates courts to administer justice without undue regard to procedural technicalities.

DISPOSITION

9. For the foregoing reasons, the upshot of this court's Ruling was that the Advocates' Chamber Summons application that was dated 14th September 2017 and filed on 15th September 2017 was incompetent and incurably defective. The same is hereby dismissed with costs to the Client.

10. It is so ordered.

DATED and DELIVERED at NAIROBI this 16th day of October 2018

J. KAMAU

JUDGE