



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

REFERENCE NO 126 OF 2018

CONSOLIDATED BANK OF KENYA APPLICANT

VERSUS

CHARLES KINYUA 1ST RESPONDENT

JOSEPH NDUATI 2ND RESPONDENT

RULING

1. Before me is an application dated 17th September, 2018 brought under **Articles 50(1), 159(2) (d), 162(1) of the Constitution, sections 1A, 13 and 3A of the Civil Procedure Act Cap 21 of the Laws of Kenya and Paragraph II(2) and 11(A) of the Advocates Remuneration Order**. The applicant prays that the decision of the taxing officer dated 2nd August, 2018 be set aside, reviewed and/or revised and the 1st respondent's bill of costs be taxed afresh.

2. The grounds upon which the Motion was grounded were set out in the body of the Motion and the supporting affidavit of Kimathi Kibiti sworn on 17th September, 2018. These were that on 1st August 2018, Hon. E. Ngigi, as taxing master taxed the 1st defendant's bill of costs dated 29th February, 2018 and allowed the same in the sum of Kshs.159,690/=.

3. That the applicant had filed a Notice of objection dated 15th August, 2018 objecting to the whole taxation; that he had in the said objection sought the reasons for the taxation but none had been provided for by the taxing officer; that the taxing officer had taken account of irrelevant facts and thereby awarded costs that are contrary to the applicable principles.

4. The application was opposed through the replying affidavit of Joseph Mwangi, Advocate sworn on 23rd October, 2018. He deponed that the 1st respondent had applied for assessment of costs which was done properly. That there was inordinate delay in bringing the present application.

5. Firstly, the application is moot. It refers to a decision which has not been exhibited. The court cannot therefore ascertain whether or not there exists such a decision that is capable of being challenged. Secondly, the applicant has referred to the Notice of Objection which it allegedly made to the taxing master on 15th August, 2018. A copy of that notice was not produced. Further, even the bill of costs that was allegedly wrongly taxed was not exhibited. On these alone, the application becomes a non-starter.

6. Be that as it may, I have considered that in the Replying Affidavit, the Certificate of costs dated 1st August, 2018 and the bill of costs dated 20th August, 2018 have been produced. I have also noted that the Notice of Objection was exhibited in the application dated 18th October, 2018 but which was dismissed on 25th October, 2018. That notice is crucial as it is the determinant factor whether the court has jurisdiction to entertain the reference.

7. From the record, the objection was made on 15th August, 2018. The procedure for challenging a decision of the taxing officer on costs is set out under **paragraph 11 of the Advocates Remuneration Order**. It is only by properly invoking that provision that the jurisdiction of this court can be said to have been properly invoked.

8. A reading of that provision will show that an aggrieved party is required to notify the taxing officer of his/her disagreement and specify the items objected to with 14 days of the decision. Such party should therein request for the reasons for the decision. The taxing officer is obligated to supply the party with the reasons within 14 days within which a reference should be filed in the High Court.

9. In the present case, the objection was lodged within time. It would seem that the taxing officer did not give his/her reasons within 14 days. The reference should have been lodged by 29th of August, 2018. It was not. The present application was filed on 21st September, 2018 well outside the time provided for under **paragraph 11 of the Advocates Remuneration Order**. There was no application for extension of time

within which to bring the present application.

10. Accordingly, the jurisdiction of this court was not properly invoked. The application is therefore without merit and the same is hereby dismissed with costs to the 1st respondent.

SIGNED by me;

A. MABEYA

JUDGE

DATED and **DELIVERED** at Meru this 13th day of December, 2018.

F.GIKONYO

JUDGE