



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CIVIL MISC. APPLICATION NO. 3 OF 2017

CAROLYN K. MUUMBO & CO. ADVOCATES.....APPLICANT

VERSUS

MULU MBUVI aka JOHN MULU MBUVI.....RESPONDENT

RULING

1. The issues herein relates to a taxation done by the Deputy Registrar as Taxing Master in Garissa High Court Civil Case No. 2 of 2012 which was determined by this court. Two applications were filed and are for my determination today, as both were heard together.

2. Counsel for the parties also filed written submissions and highlighted the same in court. I will deal with the two applications, one after another.

3. I will start with the last application which is a Notice of Motion dated 21st September 2018 filed by J.K. Mwalimu & Co. Advocates for Mulu Mbuvi, seeking the following orders-

1) That this Honourable Court be pleased to grant leave to the applicant to file his objection to the taxing officer's decision in this court without the taxing officer's reasons.

2) That this Honourable Court be pleased to set aside the taxing officer's decision on item Nos. 2, 89, 2B, 5E, 6F, 8H, 91 and 13M of the Advocate Client's Bill of Costs.

3) That this Honourable Court be pleased to vary the method of computing the costs payable to the respondent and proceed to properly compute the same.

4) That the Honourable Court be pleased to award costs of this application herein.

4. In my view, this application is incompetent as it is filed in already existing proceedings that were filed by Carolyn K. Muumbo & Co. Advocates in respect of the same taxation. It is an abuse of the process of the court. I will strike out the same, as I am not even in a position to know that proper steps were taken before the Taxing Officer before the filing of the application to this court.

5. The next is a Chamber Summons dated 8th June 2018 filed by Carolyn K. Muumbo advocate, to which a Preliminary Objection dated 29th June 2018 was filed in the following terms –

(1) That the applicant has not complied with the statutory requirement set out in rule 11(1) (2) of the Advocates Remuneration Order made under the Advocates Act, Chapter 16 of the Laws of Kenya.

(2) The Honourable Court lacks jurisdiction to entertain the application before rule 11 (1) (2) of the Advocates Remuneration Order is complied with.

6. The said Chamber Summons requests this court to set aside the Taxing Master's decision dated 30th May 2018 and to allow various items of advocate's fees that were taxed off by the Taxing Master.

7. The respondent's counsel J. K. Mwalimu Advocate relied on rule 11 of the Advocates Remuneration Order which states 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.

(2)The taxing officer shall forthwith record and forward to the objector the reasons for the decision to those items and the objector may within 14 days from receipt of the reasons apply to the Judge by Chamber Summons, which shall be served on all parties concerned setting the grounds of his objection.”

8. Mr. Mwalimu for Mulu Mbuvi submitted that such notice was not given to the Taxing Master before the Chamber Summons herein was filed.

9. Ms. Carolyn Muumbo as the other hand argued that such Notice of Objection was given to the Taxing Master before filing the Chamber Summons Application.

10. I have perused the affidavit filed by Ms. Muumbo advocate in support of the Chamber Summons. Paragraph 4 and 5 states as follows-

“4. That the execution process was commenced and the respondent was paid in full but he refused to release the monies due to the advocate thereby necessitating the filing of the Advocate Client Bill of Costs dated 17th day of December 2017 and the ruling on that application was delivered on 30th day of May 2018.

5. That I was dissatisfied with the decision of the taxing master hence the filing of this application.”

11. There is no reference whatsoever to compliance with rule 11 (1) (2) of the Advocates Remuneration Order before coming to this court. My perusal of the entire affidavit also does not disclose any reference to such Notice having been given.

12. I have however seen a Notice of Objection under rule 11 (1) of the Advocates Remuneration Order dated 10th June 2018 and filed on 5th June 2018 in this court, addressed to the Taxing Officer Garissa High Court. There is no indication however, whether it was received by the Taxing Officer in Civil Suit No. 2 of 2012 and is infact headed Misc. Application No. 3 of 2017 which is the present application. In my view, if the Notice of Objection was meant for the Taxing Officer, it would have the number Garissa High Court Civil Case No. 2 of 2012 under which the Certificate of Taxation was issued.

13. In my view, this Notice of Objection was done in this court as an afterthought. It was also erroneously filed in this court in the present application rather than being filed in the Taxation Cause which was before the Taxing Master that is Garissa High Court Civil Case No. 2 of 2012, and should only have been filed in this court as an annexure. I am thus of the view that the Preliminary Objection raised by Mr. Mwalimu on the competence of the Chamber Summons herein is tenable, as no Notice of Objection was given to the Taxing Master.

14. I find that the Chamber Summons application dated 8th June 2018 filed before this court is premature and I strike out the same.

15. To conclude, both applications are incompetent and are hereby struck out.

16. Because both applications have been struck out, I order that parties will bear their respective costs of the applications.

Dated and delivered at Garissa this 10th December, 2018.

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George Dulu

JUDGE