



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

MISCELLANEOUS CAUSE NO.533 OF 2012

KTK ADVOCATES.....ADVOCATE/RESPONDENT

VERSUS

CPF FINANCIAL SERVICES LIMITED.....CLIENT/APPLICANT

RULING

(1) Before court is the Notice of Motion dated **13th November 2018** by which the Client/Applicant seeks the following orders:-

“(1) SPENT

(2) THAT pending the hearing and final determination of an intended Appeal against the Ruling delivered on 5th October 2018, there be a stay of further proceedings and in particular taxation of the Advocate/Respondent Bill of Costs dated 23rd November 2016.

(3) THAT the costs of this application be provided for.”

The application was based upon the grounds cited therein and was supported by the Affidavit sworn on **13th November 2018** by **JEREMY NJENGA** an Advocate of the High Court of Kenya.

(2) The Advocate/Respondent being KTK Advocates filed Grounds of Opposition to the Application dated **15th November 2018**. The application was argued orally before the court on **20th NOVEMBER 2018**.

BACKGROUND

(3) In a Ruling dated **14th September 2018**, **Hon lady Justice Olga Sewe** dismissed the clients Application dated **9th February 2018** and discharged orders staying the taxation of the Advocate/Client Bill of Costs dated **23rd November 2016**. Being aggrieved by that decision the Client/Applicant did on **13th October 2018** file an appeal against that decision. Counsel for the Client/Applicant submitted that the taxation of the Bill of Costs is scheduled to proceed before the Hon. Deputy Registrar on **10th December 2018**. He submits that the present application seeking a stay of said taxation is intended to save valuable judicial time and to avoid any prejudice to the Client/Applicant in the event that their appeal succeeds.

Counsel contends that if the stay orders sought are not granted then their intended appeal will be rendered nugatory.

(4) **Mr. Kipkorir**, who is the Advocate/Respondent strenuously, opposed the application. He challenges the application which was premised upon **O42 Rule 6** of the Civil Procedure Rules and submits that the same ought to have been brought under the **Advocates Remuneration Order** which is the applicable law in disputes over Advocate/Client fees. For this reason Counsel contends that this application is a non-starter.

(5) Counsel submits that the Advocate filed this Bill of Costs way back in 2016. Since that time the client has filed numerous application all in an attempt to scuttle the taxation of the Bill. That no sufficient cause has been advanced why the taxation ought to be stayed. It was submitted that party who is dissatisfied with the decision of a Taxing Master is at liberty to file a reference in the High Court. Finally **Mr. Kipkorir** urges this Court to dismiss the present application with costs.

DETERMINATION

(6) I have carefully considered the submissions filed by both counsels in this matter the relevant law as well as the authorities filed in court. In deciding whether or not to grant a stay of taxation the court must be guided by laid down principles. Specifically the court must consider whether it is just and equitable in the circumstances to grant such a stay. In this case the Bill of Costs was filed way back on **23rd November 2016**. To date two (2) years down the line the same has not been taxed. This is mainly due to the numerous applications filed by the Client/Applicant seeking to block the taxation. To grant the stay requested will only serve to delay further the taxation of this Bill. I do agree with Mr. Kipkorir that there has already been inordinate delay in having the Bill taxed. In **MACHIRA & CO. ADVOCATES –VS- ARTHUR K. MAGUGU & ANOTHER [2012] eKLR**, the court stated:-

....“An advocate whose instructions have been terminated is entitled to immediate payment of his fees for the services rendered. If upon demand the client refuses to pay, he is entitled to file his bill and have it taxed immediately. He does not have to wait until the matter is concluded. He also does not have to depend on the advocate on record to recover his fees for him....”

(7) Counsel for the Applicant argues that if the taxation proceeds on **10th December 2018**, their intended appeal may be rendered nugatory. I do not agree. The jurisdiction of the High Court in regard to Taxation is provided for by Paragraph 11(1)(2)(3) of the **Advocates (Remuneration) Order** which provides:-

“11(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 without fourteen days from the receipt of the reasons to apply to a Judge by Chamber Summons which shall be served on all the parties concerned settling out the grounds of this objection.

(4) 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.”

(8) Therefore taxation by a Deputy Registrar does not mark the end of the matter. If the Client is dissatisfied with the Ruling of the Taxing Master they are at liberty to file a reference in the High Court and may even apply to have the Bill taxed a fresh. I am fortified in this regard by the decision in **Hon Justice J.A Makau in TOM OJIENDA ASSOCIATES –VS MUMIAS SUGAR COMPANY LIMITED & ANOTHER 2018 eKLR** where the Court held:-

“I am not satisfied that the Applicant has proved the substantial loss that it stands to suffer if the application for stay is denied. The Applicant has recourse to file a reference to the High Court once all matters in issue are ventilated and the Deputy Registrar makes her determination.”

(9) Similarly in this matter I find that the Applicant has failed to demonstrate what prejudice he stands to suffer if the taxation proceeds as scheduled. The Applicant retains the liberty to file a reference before the High Court if he is dissatisfied with the decision of the Taxing Master.

(10) I am not persuaded that any merit exists in the present application. The application is nothing more than a continuation of the Clients attempts to frustrate the collection of the fees due to the Advocate. Accordingly I decline to issue a stay of Taxation.

This application is hereby dismissed in its entirety with costs to the Advocate/Respondent.

Dated at **Nairobi** this **3rd** day of **December** 2018.

Justice Maureen A. Odera