



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
MISC. APPLICATION NO. 8 OF 2017
ARISING FROM MISC. CASE NO. 174 OF 2015

RICHARD CHOMBA NJAGI.....1ST APPLICANT/CLIENT
PAULINE NJERI NJAGI.....2ND APPLICANT/CLIENT
CELESTINE MWENDA MUNENE.....3RD APPLICANT/CLIENT

VERSUS

HENRY ATHIMBU KURAUKA.....RESPONDENT/ ADVOCATE

RULING

1. On 13th January 2017 the applicants brought the present application seeking orders that:

- a. the court do extend time within which to file reference;
- b. the decision of the taxing master in the ruling delivered on 17th November 2016 as regards all items of the respondent's Advocate/Client Bill of Costs dated 20th November 2015 be set aside; and
- c. the said bill of costs be referred back to another taxing officer for fresh taxation.

The application was based on the grounds that the taxing master erred in taxing the bill of Kshs.164,750/= all inclusive; that the taxing master erred in failing to take into consideration the fact that the advocate/respondent was the one who breached the advocate client relationship between him and the applicants by over-delaying the succession cause; that the taxing master erred in awarding the respondent/advocate Kshs.164,750/= when it was clear the parties had agreed on a round figure from the onset; and that the taxing master erred in failing to consider the submissions of the applicants and by failing to take into consideration the amounts already paid by the applicant. The application was supported by the affidavit of Celestine Mwenda dated 13th January 2017 and 28th September 2018.

2. The application was supported by the affidavit of Celestine Mwenda dated 13th January 2017 and 28th September 2018. The summary of her case was that despite the taxing master being aware that the applicants had been dissatisfied with the services of the respondent and had lodged a complaint against him with the Advocates Complaints Tribunal vide **Disciplinary Cause No. 41 of 2014**, the taxing master none the less found in favour of the respondent; that despite being asked to either strike off the bill and/or at the very least put it in abeyance until the **Disciplinary Cause No. 41 of 2014** is finalized, the court went ahead to deliver a ruling thereof thereby running the risk of finding itself in between two conflicting judgments; and that the respondent sought payment despite having fraudulently transferred and registered property forming part of the estate in **succession cause number 659 of 2013** to one Stephen Mungai Kamanu and despite disheartening absolute orphans.

3. On 9th October 2017 the respondent filed a notice of preliminary objection on the grounds that:

- a. the application is scandalous, incompetent, misconceived and fatally defective;
- b. the application is made after inordinate delay the same is an afterthought;

- c. the respondent is entitled to costs as ordered by the Deputy Registrar;
- d. the court has no jurisdiction to grant the prayers sought; and
- e. the application is an abuse of the court process.

4. Parties filed their written submissions which I have considered.

5. The applicants submitted that the delay was occasioned by the inability to get copies for proceedings to enable them file an informed application. It was the submission of the respondents that the applicants did not exercise their rights to file a reference in the High Court against the taxed amount within the stipulated time nor did they follow the procedure for an aggrieved party in challenging a taxation ruling as set out at **Rule 11** of the **Advocates' Remuneration Order**. The respondent further submitted no reference was filed within 14 days of taxation and no application was made in writing requesting reasons for taxation.

6. Rule 11 of the **Advocates' Remuneration Order 2009** is clear that the Court has discretion to extend time for lodging a reference notwithstanding the expiry of the 14 day period prescribed for the reference from the taxing master's decision on costs. **Rule 11** of the **Advocates' Remuneration Order** provides as follows:

"11. Objection to decision on taxation and appeal to Court of Appeal

- 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 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.**
- 3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.**
- 4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.**
- 5. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired."**

7. In exercising its discretion in this regard, the court notes, contrary to the submission by the respondent, that there was no inexcusable delay in presenting this application. The applicant was diligent in seeking to have the dispute on the taxation of costs herein determined expeditiously. The decision of the taxing master was delivered on 17th November 2016 as regards all items of the respondent's Advocate/Client Bill of Costs dated 20th November 2015. The applicant filed the present application on 13th January 2017 seeking extension of time to file a reference. I note that there was no inordinate delay in bringing the present application (**Labh Singh Harman Singh Ltd v Attorney General & 2 others [2016] eKLR**).

8. The court further notes that the applicable **Rule 11** of the **Order** contemplates a notice in writing requesting for reasons of the Taxing Officer's decision on taxation of specified items of the Bill of Costs, and upon receipt thereof an application commonly referred to as a reference is made to a judge, by way of Chambers Summons, setting out the grounds of objection to the taxation. It is clear that there was neither a notice to the Taxing Officer nor a reference to this court.

9. In the interests of justice, and in bid to have the substance of the complaint regarding the taxed costs be dealt with, I will allow the applicant 7 days from today to file and serve the reference. The respondent shall respond within 14 days. Following that, both sides shall have 14 days to file and exchange written submissions. The matter shall be mentioned on **31st January 2019** for further orders.

10. The applicant has been indulged. He will pay costs of the application.

DATED and SIGNED at NAIROBI this 11TH day of DECEMBER 2018

A.O. MUCHELULE

JUDGE