



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MURANG'A
MISC CIVIL APPLICATION NO 59 OF 2014
J. M. KAGWI (T/A J M KAGWI & CO, ADVOCATES.....ADVOCATE/APPLICANT
VERSUS
MARGARET WANGARI WANYOIKE.....CLIENT/RESPONDENT

RULING

1. By a ruling herein dated and delivered on 01/07/2015, the **Taxing Officer** of the Court allowed the Client's preliminary objection and in effect struck out the advocate/client bill of costs dated and filed on 09/07/2014 with liberty for the Advocate to prepare "a proper bill with the requisite schedule expressly shown and serving it 30 days prior to its filing as required by law".
2. The Advocate has now applied by chamber summons dated 09/12/2015 under the inherent power of the court for an order to set aside the said order of the Taxing Officer. Among the grounds for the application is that the Taxing Officer had no jurisdiction to make the orders. The other grounds are –
 - (i) That the Taxing Officer misapprehended the provisions of section 48 of the Advocates Act.
 - (ii) That the Taxing Officer failed to apply the spirit and intent of Article 159(2) (d) of the Constitution.
 - (iii) That the orders of the Taxing Officer have no basis in view of Schedule VII of the Advocates (Remuneration) Order.
3. I will deal with the issue of jurisdiction up front. The Taxing Officer's primary jurisdiction is to tax the bill of costs before him. But he has power also to deal with any issue that may arise pertaining to the taxation at hand. This is implied by **Paragraph 13A** of the **Advocates (Remuneration) Order**.
4. However, this power does not extend to ruling on the issue whether or not the costs sought to be taxed are due, or if a bill of costs as filed is premature or otherwise not properly before the Taxing Officer. When such issues arise, they must first be determined by the court that dealt with the matter in which the costs arose or by the High Court. It is only the court that dealt with the matter in which the costs are claimed that can deal with the issue whether or not the costs are indeed due, and therefore taxable by the Taxing Officer.
5. With regard to competency of the bill or whether or not it is pre-mature or not properly before the Taxing Officer under the Advocates (Remuneration) Order, that is an issue to be determined by the court before the bill can either be struck out or confirmed due for taxation. "Court" is defined in **section 2** of

the **Advocates Act, Cap 16** as the High Court. The Advocates (Remuneration Order) is made by the Chief Justice under the Advocates Act.

6. So, clearly, the Taxing Officer herein had no jurisdiction to deal with the issue whether or not the Advocate's bill of costs before her was properly before her and due for taxation. She should have referred the issue to the High Court with the consent of the parties under **Paragraph 12** of the Advocates (Remuneration) Order.

7. The Taxing Officer also misapprehended the purport and impact of **section 48** of the Advocates Act. A bill of costs filed for taxation is not a suit brought for the recovery of any costs due to an advocate or his firm. The suit contemplated in that section is a proper suit commenced by plaintiff. The wording of the section itself states so!

8. I need not deal with the other issues raised in the application.

9. I will in the event allow the chamber summons dated 09/12/2015. The order of the Taxing Officer dated 01/07/2015 by which the Advocate's bill of costs dated 09/07/2014 was struck out is hereby set aside. The bill is hereby remitted to the Taxing Officer for taxation in the usual way. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 9TH DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANGA THIS 10TH DAY OF MARCH 2017