



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
MISC CIVIL APPLICATION NO 50 OF 2015

JULIUS NDUATI MWANGI.....APPLICANT

VERSUS

TIMOTHY ETHAN THIONG'O.....RESPONDENT

R U L I N G

1. This ruling concerns the application herein by **notice of motion dated 14/04/2011** wherein the Applicant seeks the main order for extension of time under **Paragraph 11(4)** of the **Advocates (Remuneration) Order** (hereinafter the **Remuneration Order**) to file objection...

“...to the taxation in (Murang’a CM) Civil Case No.113 of 2010”.

The application is supported by the Applicant’s affidavit annexed thereto.

2. The Respondent has opposed the application by **grounds of opposition dated and filed on 21/06/2011**. The points taken are, that the application is incompetent, bad in law and does not lie; that there was no taxation at all, and hence that there is nothing to object to; that in any case it has not been demonstrated “what items in the alleged taxation he wishes to object to; and that the award of costs was not excessive.

3. The parties filed written submissions in respect to the application. The Applicant’s submissions were filed on 16/02/2012 while those of the Respondents were filed apparently on 12/03/2012. For some reason not apparent on the court record, it was not until 07/06/2016 and 27/09/2016 that the learned advocates highlighted their submissions. I have considered the parties respective submissions. I have also perused the court record.

4. There was no taxation in respect to the party and party costs in **Murang’a CMCC No 113 of 2010** against which objection to taxation proceedings under **Paragraph 11** of the Remuneration Order could lie. What there was, was a **certificate of costs under Paragraph 68A** of the Remuneration Order issued by the Executive Officer of the lower court.

5. However, it is apparent that a certificate of costs under the aforesaid Paragraph 68A can only be issued when the Registrar of the High Court enters a final judgment under Order XLVIII, rule 2 of the old Civil Procedure Rules (now **Order 49, Rule 2** of the **Civil Procedure Rules, 2010**). Paragraph 68A aforesaid states –

“68A. Certificate of Costs

(i) Notwithstanding anything to the contrary in this Order, when the Registrar of the High

Court enters final judgment under Order XLVII, rule 2 of the Civil Procedure Rules (Cap 21, Sub. Leg.), he may, on application in writing and without the filing or taxation of a bill of costs or of notice to any party, sign a certificate of the costs of the suit calculated in accordance with item 15 of Schedule VI.

(ii) An advocate may, in any case in lieu of taxation, apply in writing for a certificate under this paragraph.

(iii) If the Registrar refuses an application under this paragraph he shall on request certify his refusal in writing to the applicant and the applicant may within fourteen days of receipt of the certificate give notice of objection, whereupon paragraph 11 shall apply.”

6. It thus appears that the certificate of costs issued by the Executive Officer in *Murang’a CMCC No 113 of 2010* was illegal for want of jurisdiction. What should have happened is that a party and party bill of costs ought to have been filed for taxation by the *Taxing Officer* in the usual way.

8. That being my view of the matter, I hereby set aside the certificate of costs issued by the Executive Officer in *Murang’a CMCC No 113 of 2010* and direct that a party and party bill of costs be filed therein for taxation by the *Taxing Officer* in the usual way. It is so ordered.

9. As the mistake was by the court itself, the order for costs that commends itself is that parties bear their own costs of the application.

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