



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL MISC. APPLI. NO. 667 OF 2013

MBUGUA AND MBUGUA ADVOCATES..... ADVOCATES/APPELLANT

• V E R S U S –

KENINDIA ASSURANCE CO. LTD.....CLIENT/RESPONDENT

RULING

1. Mbugua & Mbugua Advocates the applicant herein took out the chamber summons dated 20th June 2014 in which it sought for the following orders:
 - i. ***THAT this honourable court be pleased to set aside in its entirety the order of ruling of the taxing master dated 8th May 2014 and delivered on the same day.***
 - ii. ***THAT this honourable court be pleased to adjust the figures, re-assess the fees due and to find that the sum due to the applicant/advocates in this taxation cause is as presented in the bill of costs dated 30th October, 2013.***
 - iii. ***THAT in the alternative, this honourable court be pleased to review the order of the taxing master made on 8th May, 2014 disallowing the entire bill of costs herein.***
 - iv. ***THAT costs of this application be provided for.***
2. When the application came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the matter disposed of by written submissions. I have considered the grounds set out on the face of the motion plus the facts deponed in the affidavits filed for and against the application. The applicant raised a preliminary objection against the substance of the respondent's replying affidavit which it claimed was contrary to the provisions of Order 19 of the Civil Procedure Rules. The preliminary objection was heard by Lady Justice R. E. Aburili. The learned Judge struck off paragraphs 4, 5, 6, 9, 11, 13 and 14 of the replying affidavit. I will therefore not consider these paragraphs of the replying affidavit.
3. I have also considered the submissions as filed by the applicant.

The applicant avers that the taxing officer did not have jurisdiction to determine the issue of limitation of time of the subject of the bill of costs since the same can only be determined by a judge of the High court. It is argued that the power of the taxing officer is set out under paragraph 13A of the Advocates (Remuneration) Order and does not include determining whether or not the bill is time barred hence the taxing officer exceeded her jurisdiction. It prayed that the taxation be set aside.

4. The respondent did not file its submissions.
5. I have perused the ruling dated 8th May 2014, where the taxing officer in considering the bill of

costs in front of her and ruled that it had been filed 9 years after the matter was finalized contrary to section 4(1) (a) of the Limitations of Actions Act. She proceeded to dismiss the bill of costs for being time barred which triggered the current application before this court. The applicant being aggrieved by the dismissal of the application by the taxing officer, has filed the application seeking to have the orders of the taxing officer set aside for reasons that she lacked the requisite jurisdiction to dismiss the bill of costs for being time barred since the determination as to whether a matter is time barred falls squarely within the jurisdiction of the High Court.

6. The Advocates (Remuneration) Order, Rule '13A' provides for the powers of a taxing officer in part as follows:

“For purposes of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, administer oaths, to direct the production of books, papers and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.”

7. This rule lays out the duties of the taxing officer. Anything exceeding the listed duties under Rule 13A is not allowed and any acts done beyond Rule 13A are carried out of jurisdiction. The duty of the taxing officer was to tax the bill before her and not to delve into matters that she had no authority to preside over.

8. I agree with the holding in the case of **Abincha & Company advocates vs Trident Insurance Company Ltd (2013) eKLR** where Waweru Judge held that:

“Only after determination of that fundamental issue by the High Court, that is whether or not there were any costs due to the advocate that could be taxed, would the bill of costs be referred back to the taxing officer for taxation. It is found that there were costs that were due to the advocate.”

Before taxation could have been undertaken by the taxing officer, the issues of the bill of costs being statute barred having been raised by the parties ought to have been referred to the High Court by the taxing officer for determination. In this case, the High Court is the court with jurisdiction to hear and determine such issues.

9. The next issue to consider is whether the bill of costs is indeed time barred. The limitation period for filing a bill of costs starts running from the date of completion of the work that an advocate was intended to do. Halsbury's laws of England 3rd Edition volume 36 at paragraph 233 reads in part as follows:

“For the purposes of an action on the bill, time begins to run against the solicitor from the date when the work to which it relates was completed and not from the expiration of one month from the delivery of the bill.....”

10. I have perused the court record. None of the parties have annexed the proceedings of the lower court or the necessary documentation for me to establish when the work was completed and make a just ruling in the matter. The material placed before me is inadequate for me to rule on this issue of the bill of costs being time barred. In the premises and in the interest of justice, I direct that the parties take an appropriate date to address the court on the issue of the bill of costs being time barred and the necessary documentation for purposes of establishing whether the bill of costs should be sent to the taxing master for taxation.

11. Looking at the prayers as set out in the application, the applicant has prayed that this court adjusts the figures and re-assesses the fees due. The applicant is basically asking this court to tax the bill of costs that is yet to be taxed by the taxing master. The law is very clear on who is tasked with the duty of taxing bills. Paragraph 11 of the Advocates (Remuneration) Order is categorical on when the high Court should delve on matters of taxation. The High Court sits as the appellate

court in taxation matters upon an aggrieved party filing a reference. That is not the case in this matter since the bill is not yet taxed, and therefore, the court cannot proceed to tax the bill as prayed by the applicant.

12. In the end, I hereby set aside the order of the taxing officer made on 8.5.2014. The bill of costs dated 2nd July 2013 is reinstated. Parties to list the matter of hearing on the question as to whether or not the bill of costs is time-barred before a judge. Costs of the application to await the outcome of the taxation.

Dated, Signed and Delivered in open court this 1st day of April, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant