



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPL. NO. 230 OF 2015

**IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 LAWS OF KENYA AND THE
ADVOCATES (REMUNERATION) (AMENDMENT) ORDER, 1997 LEGLA NOTICE NO. 159
OF 17/11/2006 AND NO. 550 OF 11/4/2014**

MWANGI KENG'ARA & CO. ADVOCATES.....ADVOCATE

AND

INVESCO ASSURANCE COMPANY LIMITED..... CLIENT

ARISING FROM

IN THE RESIDENT MAGISTRATE'S COURT AT A GATUNDU CIVIL SUIT NO. 504 OF 2003

PENINNAH NJOKI NJOROGE..... PLAINTIFF

V E R S U S –

PETER GITAU MWILIA.....1ST DEFENDANT

JOHN MBURU MWAURA.....2ND DEFENDANT

RULING

[1] On 2.11.2015, Hon. Makungu, the Deputy Registrar of this court and the Taxing Officer in this matter made an order granting leave to client/respondent to cross-examine the Advocate Applicant over the affidavit sworn on 13th October 2015 and filed in response to the Preliminary Objection dated 27.7.2015.

[2] Miss Mwangi, learned advocate for the **Advocate Applicant** applied before the Taxing Officer to determine the question as to whether it was appropriate to grant the order for leave to cross-examine a deponent of an affidavit when the preliminary Objection was pending. Miss Okoth who held brief for Mr. King'ara was of the view that there was nothing wrong to cross examine the deponent since the affidavit was filed in response to the preliminary objection. Hon. Makungu instead of deciding the issue referred the same to this court to render an opinion pursuant to paragraph 12 of the Advocates (Remuneration) Order.

[3] Mr. King'ara learned advocate for the client beseeched this court to direct the Advocate/Applicant to file a reference so that this court can be seised of the matter.

[4] Miss Mwangi was of the view that this court can rightly give directions without the filing of a formal

reference.

[5] I have carefully considered the rival submissions. I have also taken into account the provisions of paragraph 12 of the Advocates (Remuneration) Order. There is no doubt that the learned Taxing Officer has made an order directing the Advocate to take the witness stand to be cross-examined on his affidavit in response to the preliminary objection. There is also no dispute that parties have filed written submissions over the preliminary objection and what is pending is the cross-examination of the advocate. It would appear the advocate is indirectly resisting the order. No appeal nor review has been filed to challenge the order. There is therefore no basis for the file to be placed before this court. This court can only render its opinion if it is formally approached by way of a reference or in the alternative parties can approach the Taxing court to determine the issue by way of review. In the end there is no competent application before this court to render its opinion. Consequently, the file should be taken back to the Taxing court to proceed appropriately

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

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent