



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**HIGH COURT CIVIL APPEAL 355 OF 2002**

SIFUNA & COMPANY ADVOCATES.....PLAINTIFF

VERSUS

1. AKHTAR SHAHID BUTT

2. MODERN COAST BUILDING CONTRACTORS...DEFENDANTS

**R U L I N G**

1. When the application dated the Notice of Motion dated 12/8/2016 came up in court on the 13.09.2016, Mr. Khatib Advocate for the Respondent/Client asked for courts direction on where this application seeking setting aside orders taxation could be heard. He was of the view that it is due for hearing before the Deputy Registrar.

2. On his side Mr. Mkan for the client/applicant, was of the view that the matter should be heard before this court and relied on the provisions of Order 49 Rule 5 Civil Procedure Rules.

3. The application is disclosed to be grounded upon and invokes the provisions of paragraph 14 of the Advocate (Remuneration) Order as well as various provisions of the Civil Procedure Act and the Rules.

4. Whatever it is, that can be understood of the prayers in the application, the applicant is dissatisfied with the determination of the taxing officer in taxing the Bill of costs dated the 27/5/2015 by which the clients costs were taxed in the sum of Kshs.156,968. If my understanding of the dispute in the application be right then I take the position and view that Rule 11 of the Advocate Remuneration Order is the applicable law and it mandates that the dispute be determined by the court and not the taxing officer.

5. Rule 11 of the Order reads:-

**Objection to decision on taxation and appeal to Court of Appeal**

**i) 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.**

**ii)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.**

6. To this court the provision doesn't distinguish between applications to set aside orders of the Deputy Registrar as taxing officer or a reference by the person objecting. It dictates that any objection to the decision of the taxing officer be heard before a Judge in Chambers.

7. In the matter before me the Applicant/Advocate contests the Certificate of costs which has led to

issuance of the Notice to show cause.

8. I take it to be a decision by the taxing officer being challenged. It is therefore a matter that need to be dealt with by the court and not the taxing officer.

9. It is so ordered.

**Dated at Mombasa this 10th day of October 2016.**

**HON P.J.O. OTIENO**

**JUDGE**