



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 476 OF 2013

**WETANGULA, ADAN, MAKOKHA & COMPANY
ADVOCATES.....APPLICANT**

VERSUS

**ABDIRAHMAN ABDI alias ABDIRAHMAN
MUHUMED**

ABDI.....RESPONDENT

RULING

1. Before this Court is a Chamber Summons dated 9th June, 2014. It is expressed to be brought Under rule 11 (2) of the Advocates (Remuneration) Order, Schedule VI of the Advocates Remuneration (Amendment) Order 2009, the Advocates Act, Chapter 16 of the Laws of Kenya. The Applicant seeks the following orders:-
 - a. That this court be pleased to dispense with the requirement under rule 11 (2) of the Advocates (Remuneration) Order that the Taxing Officer records and forwards to the objector (Applicant) reasons for her decision on the merits of the items objected to herein before an application to a judge by way of a reference there from may be filed.
 - b. That the Taxing Officer's ruling/decision delivered on the 24th day of February 2014 herein on the issue of instruction fees, be and is hereby set aside.
 - c. That this court be pleased to re-assess and review the Advocates Client Bill of Costs dated the 2nd May, 2013.
 - d. That in the alternative, the Applicant's Advocate Client Bill of Costs dated 2nd May, 2013 be remitted to another Taxing Officer for review and re-assessment.
 - e. That costs of this application be provided for.
2. The application is premised on the grounds on the body of the application and the supporting affidavit of Kennedy O. Ochieng' sworn on 10th June, 2014. The Applicant urged that the technical requirement for the Taxing Officer to furnish written reasons for her decision be dispensed with since she failed to give reasons despite the Applicant's request and the reasons required have been discerned from her ruling. The Applicant's gravamen is that the Taxing Officer failed to consider the nature, importance, complexity of the matter and that instruction fees is a static that is chargeable and it matter not where the matter has reached. He stated that the failure led to the Taxing Officer awarding instruction fees and ended up award a sum of KShs. 1,500,000/= instead of KShs. 8,327,000/=. The Applicant also took issue with the Taxing Officer's observation in her ruling that the prayers were non-monetary and the subject matter could not be determined from the pleadings.

3. The application was not opposed. Learned Counsel for the Applicant Mr. Ngacha, submitted that the main item being challenged is the instruction fees of KShs. 1,500,000/= awarded by the Taxing Officer. He contended that the fee should have been KShs. 8,327,000/= bearing in mind the subject matter of the suit. Referring court to the further amended plaint he stated that the sum pleaded was KShs. 300,000,000/=. He urged this court to set aside the order on taxation and tax the bill afresh or refer it to another Taxing Officer for taxation.
4. I have considered the deposition and the submission find that the following issues fall for determination:-
 - a. Whether or not this application is correctly before this court.
 - b. If (a) above is answered in the affirmative, whether or not the respondent has established good grounds for setting aside the certificate of costs.
5. The provisions as to the time for filing of a reference are found in Rule 11 of the Advocates Remuneration Order. It provides:

“(1) 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.

(2) 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 to the grounds of his objection.”(Emphasis own)

6. The Applicant has exhibited a letter dated 26th February, 2014 written to the Taxing Officer in accordance with Rule 11 of the Advocates Remuneration Order. No response was however tendered by the Taxing Officer. The Courts’ power under paragraph 11 of the Advocates (Remuneration Order) are meant to be exercised to meet the ends of justice so that the objector is not be barred from filing a reference in circumstances such as the one at hand. I am fortified by the Court of Appeal’s decision in **Kipkorir, Titoo & Kiara Advocates v. Deposit Protection Fund Board [2005] 1KLR 528** where the implication of a Taxing Officer’s failure to record and/or furnish reason for his/ her decision was discussed as follows:-

“If a taxing officer totally fails to record any reasons and to forward them to the objector as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference.”

7. In view of the foregoing, I find and hold that this application has merit and I allow it in the following terms:
 - a. The ruling of the Taxing Officer dated 24th February, 2014 and certificate of costs dated 19th March, 2014 be and are hereby set aside.
 - b. The bill of costs be retaxed before a different Deputy Registrar.

Dated, Signed and Delivered in open court this 6th day of February, 2015.

J. K. SERGON

JUDGE

In the presence of:

N/A for the Applicant

N/A for the Respondent