



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC. APPLICATION NO. 75 OF 2012

FRANCIS MWANZA MULWA OBJECTOR

VERSUS

THOMAS KIMAU WAMBUA RESPONDENT

RULING

1. The application dated 12/4/13 seeks orders that the decision of the Taxing Officer be set aside and the Bill of Costs be remitted for taxation before another Taxing Officer.
2. The Application is based on the following grounds:-
 1. **“The learned Taxing Officer grossly misdirected herself and erred in principle in dismissing the Applicant’s Bill of costs for lack of evidence without first invoking the powers conferred to her by paragraph 13A of the Advocates (Remuneration) (Amendment) order.**
 2. **By the manifest inference in her ruling that evidence ought to have been exhibited on the Bill of Costs the learned Taxing Officer misdirected herself and thus erred in principle.**
 3. **The said Taxing Officer was wrong in holding that she found nothing to suggest that instructions were indeed given and this notwithstanding clear admissions in the Respondent replying affidavit filed with the preliminary objection on 27th June 2012.**
 4. **Having dismissed a preliminary objection which was premised on the alleged lack of instructions by the Respondent to the Objector the learned Taxing Officer erred in capriciously alluding to the same ground in dismissing the Bill of Costs.”**
3. According to the affidavit in support, the Deputy Registrar dismissed a **Preliminary Objection** that was raised by the Respondent, yet the Taxing Officer dismissed the Bill of Costs on the same grounds that had been advanced in the Preliminary Objection. The said ground being essentially that there was no evidence to prove that professional services had been rendered.
4. The Applicant contends that the Taxing Officer failed to invoke the provisions of **paragraph No. 13A of the Advocates (Remuneration) Order.**
5. The application proceeded *ex parte*. The Respondent did not file any papers in opposition to the application though service had been effected. The Applicant filed written submissions which I have considered.
6. **Section 13A of the Advocates (Remuneration) Orders** provides as follows:-

“For the purpose of any proceeding before him, the Taxing Officer shall have power

and authority to summon and examine witnesses, to administer oath, 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. The Applicant’s contention is that the Taxing Officer ought to have invoked the provisions of the aforestated provision. It is observed that the Applicant did not apply or call upon the Taxing Master to invoke the said provision of the law. The Applicant participated in the taxation and had the opportunity to summon witnesses or produce any books and documents but did not do so. There was no single document exhibited before the Taxing Officer by the Applicant to establish a relationship of engagement between the parties. The Applicant cannot therefore be heard to complain on matters that were not raised before the Taxing Officer (*See for example Owino Okeyo & Co. –vs- Pelican Engineering & Construction Co. Ltd. 2007 e KLR*).
8. For the above stated reasons, the application is dismissed with costs.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **11th** day of **March** 2015.

B. THURANIRA JADEN

JUDGE