

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS NO. 156 OF 2008

RAJNI K. SOMAIAAPPLICANT

VERSUS

DELPHIS BANK LTDRESPONDENT

RULING

Before me is the Respondent`s Notice of Motion dated 10th October, 2012 which seeks orders to set aside the decision of the taxing master and the subsequent certificate of costs dated 19th March 2009. the Notice of Motion is expressed to be made under sections 3,3A of the Civil Procedure Act, Order L rule 1 of the Civil Procedure RULES AND PARAGRAPH 11 of the Advocates Remuneration Order.

The gist of the application as can be discerned from the grounds on its face as well as the supporting affidavit is that the taxing officer has not given the reasons of his decision despite being requested to do so pursuant to leave granted by Karanja-J in a ruling delivered on the matter on 17th November, 2010.

The application is vehemently opposed and the Respondent has filed a replying affidavit in which he deposes that the application is misconceived and bad in law in all respects; That prayer 3 of the application which in any event is fatally defective is res judicata. He further deposes that the bill of costs having been taxed pursuant to a consent entered on 21/11/2008 and the applicant herein having not objected to any of the items or even attended the taxation cannot now allege that it wants reasons for the taxation; that taxing officer gave reasons in the ruling and no specific item has been objected to. He also deposes that he had instructions to act for the applicant a fact which they acknowledged in a letter dated 3/10/2005 and they also asked him to render accounts; that there are no proceedings pending in these matters and the court cannot stay proceedings pending in other independent causes. He deposes that the applicant has taken an inordinately long time to bring this application and that the same is made in bad faith.

This matter was being handled by Muchelule-J who on 28/8/2013 directed that parties address him on certain issues and that the application proceed orally. However, on 26/8/2003 he made an order for written submissions. This was after parties appeared before him for ruling pursuant to a Notice issued to them by court.

The submissions were duly filed. I have perused the record and considered the rival submissions very carefully. In my view this is a simple and straight forward matter. On 17th November, 2010 Karanja J delivered a ruling in favour of the applicant by giving her twenty eight days from the date of the ruling within which to file a Notice of objection to taxation and request for the reasons of the taxing master....”The record shows that by a letter dated 23rd November, 2010 the applicant`s advocate on record asked the taxing officer for the reasons. I have combed the record for the reasons and have not come across any. Even the ruling referred to in paragraph 13 of the Respondent`s replying affidavit is not there. The fact that the taxation was done by the consent of the parties and that the applicant did not attend the taxation were raised before Karanja before Karanja Judge who nevertheless granted the orders sought. To rule on these facts would therefore be tantamount to sitting on appeal over his decision which with due respect am not competent to do. The taxing officer having been asked to give reasons for his decision ought to have done so. The application will therefore be allowed but upon terms that the taxing officer do give his reasons within thirty (30) days of this ruling failing which the bills shall go to another taxing officer for taxation. Each party to bear his own costs and as there was a similar application in **HC Misc 147 OF 2009**. This ruling to apply there as well. it is so ordered.

Signed, dated and delivered this 12th day of March, 2015.

E.N. MAINA-JUDGE

In the presence of:

Mr. Ragot for Soweto for applicant

No appearance for respondent

Court assistant- Moses Okumu