

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO 100 OF 2013

IN THE MATTER OF TAXATION OF COSTS BETWEEN ADVOCATE AND CLIENT

NJERI ONYANGO & CO ADVOCATES.....ADVOCATE

VERSUS

UFUNDI CO-OPERATIVE SOCIETY LIMITED.....CLIENT

R U L I N G

1. The advocate/client bill of costs herein was taxed on 17th May 2013 at KShs 15,806,890/80 A certificate of taxation subsequently issued on 20th May 2013.

2. Under **paragraph 11(1)** of the **Advocates (Remuneration) Order**, any party wishing to object to the decision of the taxing officer should have given notice of objection within 14 days of the taxation, that is, **on or before 31st May 2013**.

3. The Client has applied by **chamber summons dated 11th June 2013** under sub-paragraph (4) of the same paragraph 11 for enlargement of time within which to give notice of objection to the taxation. The application was filed on 12th June 2013; the Client was therefore late by twelve (12) days in giving notice.

4. The supporting affidavit is sworn by the Client's advocate, **Patrick, Lubanga Mutuli**. He has explained the delay as follows: He honestly but mistakenly believed that the Client had 30 days within which to file notice of objection to the taxation; that he subsequently established that under the law the Client had only 14 days, not 30 days, within which to file notice of objection; and that the mistake was not deliberate but inadvertent misapprehension of the law which should not be visited upon the innocent Client.

5. Learned counsel has further deponed that the amount of taxed costs is very large by any standard; that the Client has good grounds for contesting the taxation in that the learned taxing officer considered extraneous matters; that the Advocate will not suffer any prejudice by allowing the Client to file notice of objection out of time; and that it is in the interests of justice to allow the application for enlargement of time.

6. The Advocate did not file any papers in response to the application. But she had in the meantime filed her own application by notice of motion dated 13th August 2013 for judgment upon the taxed costs under section 51(2) of the Advocates Act Cap 16. By way of answer to the present application for enlargement of time she relied upon her affidavit sworn in support of that application for judgment. She deponed in that affidavit, *inter alia*, that the Client's application for enlargement of time is unmerited and an abuse of the process of the court because the Client is truly indebted to the Advocate for the taxed costs, the certificate of costs having not been varied or set aside.

7. I have considered the submissions of the learned counsels appearing. The first thing to note is that the delay in filing notice of objection is not inordinate. It was only twelve days. It is apparent that upon realizing his misapprehension of the law the learned counsel for the Client acted immediately and filed

the present application.

8. The second thing to note is that the costs as taxed are quite substantial. KShs 15 million-odd, even in this day and age, is not pocket change. It is a lot of money.

9. The power to enlarge time donated to the court is discretionally. In the present case I do not consider that the Advocate stands to suffer any prejudice that cannot be compensated by an award of costs. The scales of justice demand that the Client be accorded an opportunity to challenge the taxation.

10. In the event I will allow chamber summons dated 11th June 2013 and grant the enlargement of time sought. **The Client shall file and serve notice of objection to taxation within 14 days of delivery of this ruling.** The Client shall also pay the Advocates costs of this application, hereby assessed at KShs 15,000/00, within 14 days of delivery of this ruling. In default the Advocate may execute for the same. Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF JULY 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 4TH DAY OF JULY 2014