



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL APPEAL NO. 17 OF 2014

JUBILEE INSURANCE COMPANY LTD APPELLANT/APPLICANT

VERSUS

JOHN NJERU KARIUKIRESPONDENT

R U L I N G

1. The applicant filed an application dated 29/5/13 and filed on 30/5/14. He seeks *inter alia* that there be a stay of execution of the bill of costs in Civil Appeal No.60 of 2010 which was taxed by the taxing master on 16/4/14 pending hearing and determination of this appeal. The application is based on the grounds on the face of the application and the affidavit of John Njeru Kariuki.
2. In reply, the respondent filed grounds of opposition stating that;
 - i. The application was frivolous, unmerited and an abuse of court process
 - ii. That the Honourable Court lacks jurisdiction to hear and entertain the application and the substantive appeal emanating from a taxation in the same court in Embu HCCA NO 60 of 2010
 - iii. The application is misconceived ambiguous and untenable
 - iv. The application offends the provisions of Rule 11 of the Advocates (Remuneration) Order 2009 and the Advocates Act
 - v. The taxation and orders made by the Taxing Officer were in full compliance with Rule 14 and 16 of the Advocates (Remuneration) Order 2009
 - vi. That there is no tenable or arguable Appeal to warrant the orders sought.
 - vii. The respondent would be prejudiced if the application was allowed.
3. Both parties submitted orally on 23/7/14. Mr. Mugambi for the Appellant submitted that the bill was taxed unprocedurally and that his client was not heard. He urged the court not to dwell on the technicalities that the respondent had raised in the grounds of opposition.
4. Mr. Omondi for the respondent submitted that the appeal is untenable. Rule 11(2) of The Advocates Remuneration Order provides for the procedure to be followed when a party is aggrieved by the Taxing Officer's order. Rule 13 also makes further provision on this issue. He stated that no application was filed challenging the Deputy Registrar's taxation. He further stated that the applicant can only appeal with leave of the Court and that since no such leave was granted, the appeal cannot lie. He states that the applicant filed no papers and as such cannot object to the decision of the Taxing Master.

5. In his reply, counsel for the applicant stated that Rule 11 talks of filing a reference before a judge and not a chamber summons. He urged the court to disregard the technicality as time was not on their side.
6. Before I delve into the merits or otherwise of this application, I wish to first of all address myself to the grounds raised in opposition and determine whether this Appeal and application are properly before this court.
7. Rule 11 of the Advocates Remuneration Order provides that;
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 - 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.
 - iii) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - iv) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by the chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.

Rule 13 provides;

- (i) The taxing officer may tax costs as between advocate and client without any order for the purpose upon the application of the advocate or upon the application of the client, but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation, and in such event the advocate shall not be bound by or limited to the amount of the bill rendered in summarized or block form.
 - (ii) Due notice of the date fixed for such taxation shall be given to both parties and both shall be entitled to attend and be heard.
 - (iii) The bill of costs shall be filed in a miscellaneous cause in which notice of taxation may issue, but no advocate shall be entitled to an instruction fee in respect thereof.
8. There is no dispute that the bill complained of is in respect of Embu HCA No.60/10. Being aggrieved by the taxation, the Appellant/ Applicant filed this appeal followed by this application. The Provisions of R11(2) of the Advocates Act give guidance on what should be done. He ought not to have filed an appeal but a Reference. This was the position held in the case of **JOAKIM KULUNDA MAUNDU & 6 OTHERS –VS- MAKINDU WATER AND SEWERAGE CO. LTD.** Mutende Judge in arriving at the decision quoted the Court of Appeal case of **MUCHIRA & CO. –VS- ARTHUR K. MAGUGU & ANOTHER [2012] eKLR** in which it was held that;

“..... Rule 11 therefore provides for ventilation of grievances from such decisions through references to a Judge in chambers”.
 9. The application dated 29/5/2014 seeks stay of execution of the bill of costs in Civil Appeal No.60/10 pending hearing and determination of the appeal against the decision of the Taxing Master. This appeal does not lie in view of the Provisions of Rule 11 of the Advocates Remuneration Order.
 10. I therefore dismiss the application with costs. The appeal is struck out with costs.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT EMBU THIS 9TH DAY OF

SEPTEMBER 2014.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Mugambi for Appellant/Applicant

Mr. Kiama for Oraro for Respondent

Mutero/Kirog – C/c