



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Law Courts)

Miscellaneous Application 63 of 2008

IN THE MATTER OF THE ADVOCATES ACT (REMUNERATION ORDER)

AND

IN THE MATTER OF TAXATION BETWEEN THE ADVOCATES AND CLIENT

W.G. WAMBUGU & COMPANY ADVOCATES .....APPLICANT  
VERSUS

ANNE WANJIKU MUNGA .....RESPONDENT

RULING

On 21<sup>st</sup> May 2009, the Taxing Officer of this court (J. Ragot) assessed the Advocate -Client Bill of Costs presented by the Applicant at Kshs.804,829.32. The Respondent was aggrieved by this decision. On 29<sup>th</sup> May 2009, the Respondent wrote to the Deputy Registrar of the court expressing her dissatisfaction with the decision of the Taxing Officer. The Respondent informed the Deputy Registrar that she intended to file reference challenging the said taxation. She requested to be furnished with reasons for the taxation. On 3<sup>rd</sup> June 2009, the Respondent filed notice of objection to the taxation. She enumerated the items in the Bill of Costs that she was challenging. It is common ground that the Taxing Officer did not give reasons for the taxation. However, there is a ruling on record by which the Taxing Officer gave reasons why she assessed the Bill of Costs in the manner that she did.

On perusal of the record, it was apparent that the Respondent went to sleep after filing the notice of objection to the taxation. The explanation for this inaction was that the Respondent was waiting to be furnished with reasons by the Taxing Officer before she could file reference to this court. However, there is no evidence on record that the Respondent wrote any correspondence to the Deputy Registrar of this court to enquire whether the reasons had been furnished by the Taxing Officer. The Respondent was jolted into action when the Applicant sought to execute the said taxed costs. She filed a notice of motion under certificate of urgency seeking several orders from this court which included an order that this court issues appropriate direction in respect of the Respondent's notice of objection or alternatively grants her leave to file reference out of time. She further prayed that the court maintains the status quo currently subsisting pending the hearing and determination of the application. The application is opposed. Wanja Wambugu filed a replying affidavit in opposition to application. In essence, she accuses the Respondent of being guilty of laches.

At the hearing of the application, this court heard oral rival submission made by Miss Njuguna for the Respondent and by Miss Nyoike for the Applicant. This court has carefully considered the said submission. The issue for determination by this court is whether the Respondent made an appropriate case for this court to grant her the orders sought in her application. As stated earlier in this ruling, the Respondent filed notice of objection to the taxation within the requisite period as provided under **Paragraph 11(1)** of the **Advocates Remuneration Order**. The Respondent wrote to the Taxing Officer seeking to be given reasons for the said taxation. It is common ground that the Taxing Officer did not give her reasons. However, there is a ruling on record which gives reasons for the assessment of costs. Although **Paragraph 11(2)** of the **Advocates Remuneration Order** provides that the Taxing Officer shall record and forward the reasons for the decision to the Objector, the said Paragraph further provides

that the Objector may within fourteen (14) days of receipt of the reasons apply to the Judge in Chambers setting out the grounds of objection. The practice which has been adopted, and which is recommended by the court, is that if there is a ruling by the Taxing Officer on record, then the person objecting to the taxation is required to make an application to the High Court to have the reasons contained in the ruling to be deemed to be the reasons pursuant to **Paragraph 11(2)** of the **Advocate Remuneration Order** for the purposes of the reference. In the present application, it was clear to the court that the Respondent had not been proactive in seeking to prosecute the reference. The Respondent did not convince this court that she has taken any steps towards prosecuting the reference. It will not do for the Respondent to say that the Taxing Officer did not give reasons for the assessment of the Advocate-Client Bill of Costs to enable her lodge the reference. She must prove to the court that she was diligent and made effort to obtain the said reasons from the Taxing Officer. Such proof may be in form of correspondence written to the court. The Respondent did not have to wait for four (4) years to make the current application seeking appropriate directions from the court. This court agrees with the Applicant that the Respondent has been indolent and had been guilty of laches. The Respondent went to sleep upon filing the notice of objection. She took no positive steps to have the said reference prosecuted.

In the premises therefore, this court finds no merit with the Respondent's application dated 28<sup>th</sup> January 2013. The same is dismissed with costs to the Applicant.

**DATED IN NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2013.**

**L. KIMARU**  
**JUDGE**