



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**Miscellaneous Civil Application 50 of 2010**

**IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER**

**AND**

**IN THE MATTER OF TAXATION BETWEEN ADVOCATE AND CLIENT**

**JULIUS SAWENJA KHAKULA t/a J. S. KHAKULA & CO.  
ADVOCATES.....APPLICANT**

**~VERSUS~**

**NZOIA SUGAR CO. LTD.....RESPONDENT**

**RULING**

Lucas Watta Wanambisi, Alfred Simiyu Mayu, Clement Wekesa, Gilbert Wamalwa Chepurukha and Wanyama Mufutu Kibet sued the Respondent in the subordinate court at Bungoma for breach of contract. In the suit it was acknowledged that there was a contract between the parties that any dispute between them be referred to arbitration. The Plaintiffs sought the court to appoint an independent and impartial arbitrator to hear and determine the dispute and to report back to the court within such time as the court would appoint. It was indicated that the Respondent owed them Ksh.500,000,000/=. The Respondent instructed J. S. Khakula & Co. Advocates (the Applicant to defend the claim). The Applicant filed a defence seeking the dismissal of the suit with costs. The Plaintiff's *locus standi* to bring the suit was attacked as was the court's jurisdiction to hear and determine the dispute. The matter was eventually referred to an arbitrator who heard it and filed an award.

The Applicant raised a fee note of Ksh.8,143,996/= for legal services rendered to the Respondent. When the fees was not paid the Applicant filed a bill of costs on 25/3/2010. Of the Ksh.8,143,996/= sought Ksh.5,026,500/= represented instructions fees. The amount was based on Ksh.500,000,000/= which the Applicant indicated to be the value of the subject matter. The bill was taxed and only Ksh.20,900/= in total was awarded to the Applicant. The Applicant was aggrieved by the ruling of the taxing officer which was rendered on 1/10/10. On 18/10/10 a notice of objection under rule 11 (1) of the Advocates (Remuneration) Order was filed. On 9/11/2010 a chamber application under rule 11 (2) of the Advocates Remuneration Order was filed seeking the setting aside of the Taxing Officer's ruling on all the items. The Applicant further sought that the court adjusts the figures, re-assesses the fees due and finds that the sum due was the one presented in the bill of costs dated 18/3/2010.

The Respondent filed a notice of Preliminary Objection challenging the competence of the notice of objection and the chamber application. The contention of the Respondent was that the notice was filed outside the 14 days allowed by rule 11 (1) of the Advocates (Remuneration) Order and there was no leave sought or granted to extend time. Consequently, the chamber application challenging the taxation was

incompetent having been based on a notice lodged out of time.

The parties agreed to resolve this objection and filed written submissions which I have considered. Mr. Khakula Junior was acting for the Applicant and Mr. Nyamu of Kiarie & Co. Advocates was acting for the Respondents.

Under rule 11 (1) of the Advocates (Remuneration) Order it is provided as follows:

*“Should any party object to the decision of the taxing officer, he may within fourteen days after the decision of the taxing officer, give notice in writing to the taxing officer of the items of taxation to which he objects.”*

I have indicated in the foregoing that the decision being objected to was delivered on 1/10/2010 and the notice of objection was filed on 18/10/10. That was four days late. The Applicant’s written submissions sought to explain that:

*“The ruling was delivered on 1/10/2010 by the Deputy Registrar which was a Friday 10/10/2010 was national holiday and the and the same was moved to Monday 11/10/2010 because 10/10/2010 was a Sunday. Time does not run on Sunday and public holidays.”*

Any evidence or explanation sought to be given by the Applicant should have been by way of an affidavit. It was not filed. Even if the submissions were to be accepted to be evidence, which cannot be the case, the delay would be reduced by two days. Notice would consequently be two days late. No extension was sought or granted and therefore the notice was filed out of time without leave. The notice is incompetent. So is the application which is founded on the notice.

It is for these reasons that I sustain the objection raised by the Respondent in the notice filed on 11/6/2012. The notice of objection to taxation filed on 18/10/2010 and the chamber application filed on 9/11/2010 are hereby struck out with costs.

Dated, signed and delivered this 9<sup>th</sup> day of October, 2012.

**A. O. MUCHELULE**  
**JUDGE**