



REPUBLIC OF KENYA

High Court at Nakuru

Miscellaneous Civil Application 303 of 2010

JOSEPH KARANJA MBUIGUA T/A

KARANJA MBUGUA & COMPANY ADVOCATES.....ADVOCATE/APPLICANT

VERSUS

NAKURU INDUSTRIES LIMITED.....CLIENT/RESPONDENT

RULING

The advocate/client relationship between the applicant and the respondent, having been terminated, the applicant, an advocate of this court proceeded to tax his bills of costs in various matters in which he represented the respondent. Some of the bills have been taxed while others have not been taxed as a result of the orders of this court staying the proceedings in them.

According to the applicant, the taxation proceeded *ex-parte* and without notice to the respondent. The applicant therefore believes that the taxation proceeded in that manner after the applicant demanded from the respondent Kshs.3,5m in monies received by the latter for the former.

The applicant further alleges that the taxation has been conducted maliciously, fraudulently and in collusion with the taxing officer. As a result of orders of 12th July,2010 by the taxing officer, the applicant brought the present chamber summons for, among other things, stay of execution of the certificate of costs, the setting aside of those orders (of 12th July, 2010), stay of further proceedings, the calling of several other files relating to the respondent's bills of costs in respect of matters in which the respondent represented the applicant, stay of proceedings in all those files; and that the process server be summoned for cross-examination.

It is the applicant's final prayer that the bill of costs be taxed afresh. The respondent has replied that the application is incompetent for having been brought under the wrong procedure; that there was sufficient evidence that the applicant was served and no purpose will be served by calling the process server; that taxation of the bill of costs was above board.

The application has been brought pursuant to the provisions of **Section 3A** of the **Civil Procedure Act**, **Order IXB Rule 4** and **8** of the **Civil Procedure Rules** yet the relationship between the parties are governed by the provisions of the **Advocates Act** and the **Advocates (Remuneration) Order**.

While there is no doubt that the bills of cost were taxed *ex parte* and the applicant was thereby aggrieved, the broad issue in contention in this matter is whether the reliefs sought are available to the applicant. Only in respect of Nkr. H.C.Misc. Appl. No.303 of 2010 has a certificate of taxation in the sum of Kshs.6, 667,695/= been issued.

The law is settled that a certificate of taxation is by dint of **Section 51** of the **Advocates Act** only a confirmation as to the amount of costs due and unless set aside or altered by court, such a certificate shall be final. It is also trite learning that a taxing officer while taxing a bill of costs is carrying out his functions as an officer of this court appointed for the purpose of taxing bills of costs and not in the capacity of a registrar. It follows that the taxing officer exercises a special jurisdiction and as Waweru, J warned in **Donholm Rahisi Stores (Suing as a Firm) V. E.A. Portland Cement Limited** (2005) e KLR.:

“The court will not be drawn into the arena of taxation except by way of reference (from a decision of taxation) made under Rules 11 of the Advocates (Remuneration).

The role of the judge in matters of taxation is carefully set out as follows: The decisions rendered by the taxing officer may be challenged by first giving a written notice to the taxing officer specifying the grounds of objection. The taxing officer is enjoined to give reasons to the objector in writing for his decision. It is only upon receipt of the reasons from the taxing officer that the objector may apply to a judge, setting out the grounds of his objection. And that is not all. If the objector is still aggrieved, with the leave of the judge, he may appeal to the Court of Appeal.

With regard to taxation, the taxing officer has wide powers under paragraph which powers include:

“.....to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.”

I have said all these things to emphasise that this court will only be drawn into matters of taxation by way of reference after the taxing officer has failed to satisfy the objector. In other words, the applicant has side-stepped the procedure set out above.

For these reasons, I find no merit in the application which I hereby dismiss with costs.

Dated, Signed and Delivered at Nakuru this 6th day of November, 2012.

**W. OUKO
JUDGE**