



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

Civil Miscellaneous 275 of 2008

IN THE MATTER OF THE ADVOCATES ACT (CAP 16)

AND

IN THE MATTER OF ORDER L RULE 1 OF THE CIVIL PROCEDURE RULES

AND

**IN THE MATTER OF SECTION 51 & 55 (2) OF THE ADVOCATES ACT (CAP 16) OF THE
LAWS OF KENYA AND RULE 13 (1), (2), (3) AND (22) OF THE ADVOCATES
RENUMERATION (AMENDMENT) ORDER 2006**

AND

IN THE MATTER OF THE ADVOCATE'S/CLIENT BILL OF COSTS

BETWEEN

CHARLES KEAGO AREBA

t/a C. K. AREBA & CO. ADVOCATES.....APPLICANT/ADVOCATE

VRS

SURJIT SINGH & MALKIAT SINGH.....RESPONDENT/CLIENT

RULING

This is a ruling on a preliminary objection raised by Mr. Ogejo of Behan & Okero Advocates for the Respondent/Client. The notice of intention to raise the objection dated 11th of May 2009 consist of the following grounds:

- i) That the Applicant/Advocate has not issued the respondent/client with a notice of taxation.***
- ii) That a Honourable Judge of this court is not a taxing master.***
- iii) That no notice of taxation has been issued and served on the Respondents/Clients.***

The Respondent further states that the further affidavit dated 5/5/2009 was filed without leave and should be expunged from the record. The objection is raised against the hearing of taxation of bill of costs dated 21/10/2008. It is in relation to the said bill of costs that the further affidavit was filed. The Respondent was not served with the notice of taxation as alleged by Mr. Ogejo.

The objection was opposed by Mr. Areba for the Applicant on grounds that the relevant application is for leave and not for taxation. The procedure calls for leave to be obtained before the bill of costs is filed. It will therefore be unprocedural to serve notice of taxation before leave of the court is obtained. The parties Mr. Areba submitted that the parties in this application appeared before the court where a consent was recorded that the application be fixed for hearing and that a further affidavit be filed. So Mr. Areba contended that, the preliminary objection is premature and should be disregarded.

I have perused the court record, and noted that the originating motion dated 21/10/2008 consist of two prayers. The first prayer seeks for leave to file and tax costs between an advocate and client. In the second prayer the Applicant seeks to have the bill of costs as between the advocates and clients be taxed and allowed as drawn by the taxing master. The third prayer seeks for judgment to be entered and decree drawn in favour of the Applicant for the sum taxed.

The record shows that the application before the court first and foremost seeks for leave to file and tax the bill of costs. As far as the procedure is concerned, any application seeking for taxation of a bill of costs before a taxing master must first of all apply for leave. The Applicant therefore has followed the correct procedure. It is after leave is granted by the court that a notice of taxation will be required to be served upon the Respondent.

The court record shows that on 11/3/2009, the counsels for the parties in this case appeared before the court and recorded a consent to file and serve a further affidavit. The Respondent counsel's contention that the further affidavit was filed without leave has no basis.

It is my finding therefore that, the preliminary objection is premature and not merited. The court hereby rejects the same with costs to the Applicant.

Dated, Delivered and Signed at Bungoma

This 6th day of July 2009

in the presence of.....

F. N. MUCHEMI

JUDGE