



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC CASE MISC .APP 187 OF 2017**

**PATRICK KIMATHI MUCHENA T/A ARIMI**

**KIMATHI & CO.ADVOCATES.....APPLICANT**

**VERSUS**

**MARIA LILIAN O.OUYA.....RESPONDENT**

**RULING**

1. This is a ruling in respect of a chamber summons dated 24<sup>th</sup> August 2018. The application seeks setting aside of the ruling of the taxing officer delivered on 24<sup>th</sup> July 2018. The applicant contends that the taxing officer struck out the respondent's bill of costs and went ahead to grant leave to the respondent to file a fresh bill of costs. Pursuant to the leave granted, the respondent has already filed fresh bills which are due for taxation.
2. The applicant contends that once the taxing officer struck out the bill of costs, she had no jurisdiction to grant the respondent leave to file fresh bills of costs. The applicant argues that she had filed her opposition to the bill of costs and filed submissions which were never considered.
3. The respondent opposed the applicant's application based on a replying affidavit sworn on 25<sup>th</sup> October 2018. The respondent contends that the application is an abuse of the court process and that the applicant has not complied with the requirements for bringing a reference before this court. The respondent further argues that the applicant did not write to the taxing officer to give her reasons for her decision or point out the items to which she was objecting.
4. I have considered the applicant's application as well as the opposition to the same by the respondent. The only issue for determination herein is whether there are grounds for setting aside the ruling of the taxing officer delivered on 24<sup>th</sup> July 2018. A perusal of the record shows that the bill of costs was filed in respect of three files which were consolidated. The three files are ELC 870 of 2003 , ELC 2905 of 1993 and ELC 877 of 2003.
5. The applicant herein filed a preliminary objection to the bill as filed. On 7<sup>th</sup> December 2017, the bill came up for taxing before the taxing officer. The taxing officer directed that parties do file written submissions in respect of both the bill and the preliminary objection. When the file was placed before the taxing officer on 23<sup>rd</sup> May 2018, the taxing officer reserved a ruling for 4<sup>th</sup> July 2018. The ruling was deferred to 16<sup>th</sup> July 2018 and finally the ruling was delivered on 24<sup>th</sup> July 2018.
6. In the ruling, the taxing officer in a one paragraph ruling, observed that the bill was in respect of three consolidated files; that there are items containing services rendered before the respondent (sic) had been instructed and that the applicant had not indicated the dates of the documents he perused. For these reasons, the taxing officer stated that there was quite a challenge in taxing the bill as the three files had been consolidated. She concluded that she was unable to tax the bill as drawn and proceeded to strike out the bill and granted leave to the applicant to file a fresh bill which is properly drawn.
7. From the ruling of the taxing officer, it is clear that she did not tax the bill for the reason that she was unable to do so for reasons she gave in the ruling. The respondent cannot therefore fault the applicant for not asking reasons for the taxation or not indicating the items she was opposed to. The bill of costs had been opposed through a preliminary objection. Submissions had been filed. It was the duty of the taxing officer to address the issues and not simply say that she could not tax the bill due to challenges which she tried to point out in her brief ruling. If the taxing officer had reached a decision that the bill was for striking out, she should have struck it out and stopped at that. She had no business granting leave to the respondent to file a fresh bill of costs. I find that the ruling of the taxing officer cannot stand. The ruling of the taxing officer delivered on 24<sup>th</sup> July 2018 is hereby set aside together with the consequential actions pertaining to that order. This file is remitted back to the taxing officer to tax the bill afresh in consideration to the preliminary objections which had been raised against the same.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **21<sup>st</sup>** day of **March 2019**.

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of the date and time of delivery  
of ruling.

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**