



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 757 OF 2012**

**KIPRONO SINGOEI.....1<sup>ST</sup> PLAINTIFF**  
**SIMON KEMBOI (SUING ON BEHALF OF 19 OTHERS) .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**BAYETE CO-OPERATIVE SOCIETY.....1<sup>ST</sup> DEFENDANT**  
**MBUGUA KIBE.....2<sup>ND</sup> DEFENDANT**  
**GABRIEL NJUGUNA.....3<sup>RD</sup> DEFENDANT**

**RULING**

Before court is the application dated 24.6.2015 seeking review of the taxed costs on ground that the same is excessive as the case was withdrawn even before the directions were taken and that some of the parties had died. Costs were not properly backed by a valuation report. The Companies thus; Bayete and Wendani do not exist. Gabriel Njuguna opposes the application on grounds that the application is an abuse of the process of the court as the suit was withdrawn by the plaintiff's notice of withdrawal dated 16.8.2013 being filed in court on 19.8.2013. The court issued the order of withdrawal with costs to the defendants. Costs were assessed in the presence of both counsels. Kiprono Singoei paid part of the costs.

M/s Wangutusi, learned counsel for the applicant submits that a figure of Kshs.1,396,680.00 was too high and therefore, the applicant cannot pay. Mr. Miyienda, learned counsel for respondent on his part argues that there is nothing to entertain and that this court cannot review costs granted by the Deputy Registrar. Moreover, the defendant has made part payment.

I have considered the application and rival submissions and do find that the application is brought by way of Notice of Motion as opposed to a reference on costs and therefore, the same is incompetent. Even if the application is considered competent, the applicant has not demonstrated how the Taxing Officer applied the wrong principles in law in arriving at the figure taxed. There is no demonstration by the applicant that the Taxing Officer erred in principle.

Clause 11 of the Advocates' Remuneration Order 2009 is clear that the Court has discretion to extend time for lodging a reference notwithstanding the expiry of the 14-day period prescribed for the reference from the taxing master's decision on costs. Paragraph 11 of the Advocates' Remuneration Order provides as follows:

*"11. Objection to decision on taxation and appeal to Court of Appeal.*

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

*(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items **and the objector may within fourteen days from the receipt of the reasons apply to a judge by Chamber Summons,** which shall be served on all the parties concerned, setting out the grounds of his objection.*

*(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.*

*(4) The **High Court** shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.*

In this matter, there is no notice in writing to Taxing Officer of the items of taxation to which the applicant objects and it is clear that an *aggrieved party cannot give a notice in writing to the taxing officer of the items of taxation to which he objects before being furnished with the reasons for the decision of the Taxing Officer.* In this matter, the applicant has not asked for the reasons of the Taxing Officer and therefore, the objection has no basis. A reference challenging a taxation can only be based on the decision of the Taxing Officer together with reasons thereof.

I do find that the applicant has not complied with Rule 11(1) and 2 of the Advocates Remuneration order and that the application is filed more than one year after the decision of the taxing officer and that no attempt has been made to extend time. The application is dismissed with costs.

**DATED AND DELIVERED AT ELDORET THIS 2<sup>ND</sup> DAY OF OCTOBER, 2017.**

**A. OMBWAYO**

**JUDGE**