



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 137 OF 2015**

**STEADMAN ONYANGO OGEA.....CLAIMANT**

**VERSUS**

**INTERNATIONAL CENTER FOR AIDS CARE AND**

**TREATMENT PROGRAMS (ICAP) KENYA.....1<sup>ST</sup> RESPONDENT**

**MEDICAL OFFICER OF HEALTH (MOH) RARIEDA SUBCOUNTY.....2<sup>ND</sup> RESPONDENT**

**RULING.**

1. The ruling herein relates to a Chamber Summons application dated 14<sup>th</sup> February, 2021, brought pursuant to Paragraph 11 of the Advocates Remuneration Order. The Applicant seeks orders that:

- i. The decision of the Taxing Officer on items 6, 7, 9, 24, 26, 32, 35, 36, 38, 40, 46, 49, 51, 57, 60 and 68 be set aside and items allowed as presented.
- ii. In the alternative to prayer 1 above, the Taxing Officer's decision in respect of items numbers 6, 7, 9, 24, 26, 32, 35, 36, 38, 40, 46, 49, 51, 57, 60 and 68 of the Claimant's Bill of costs dated 17<sup>th</sup> June, 2019, be set aside and remitted to such other Taxing Officer as the court might direct for exercise of his/her discretion and re-assessment *ab-initio*.
- iii. The certificate of costs dated 11<sup>th</sup> March, 2020, be set aside and the same be replaced with a certificate of costs for Kshs. 492,800.00
- iv. Costs of this application be granted to the Claimant/Applicant.

2. The application is premised on grounds on the face of the application and a supporting affidavit of Steadman Onyango, the Applicant herein.

3. The 1<sup>st</sup> Respondent opposed the application through grounds of opposition dated 7<sup>th</sup> May, 2021 and filed in court on 19<sup>th</sup> May, 2021.

4. The 2<sup>nd</sup> Respondent did not oppose the application.

**Determination**

5. I have carefully considered the rival submissions filed in this matter. I have also carefully perused the Ruling delivered by the Hon. Taxing Master on 11<sup>th</sup> March, 2020. The following issues arise for determination: -

- i. Competency of the Reference
- ii. Whether sufficient grounds have been advanced to warrant the setting aside of the Taxation of 11<sup>th</sup> March, 2020.

**Competency of the Reference**

6. It was submitted for the 1<sup>st</sup> Respondent that the Reference was filed out of time and offends the provisions of Order II of the Advocates Remuneration Order. It is further submitted that the Applicant did not seek enlargement of time and no reasons have been advanced for the delay in filing the Reference.

7. Paragraphs 11 of the Advocates Remuneration Order provides for the filing of a Reference within 14 days of receipt of the reasons for the taxation. The Applicant vide their letters of 12<sup>th</sup> March, 2020 and 1<sup>st</sup> September, 2020, wrote to the Taxing Master requesting for reasons for taxing of Kshs. 268,745 from their bill of costs. The Applicant asserts that no reasons were given in response to these letters.

8. Paragraph II of the Advocates (Remuneration) Order provides inter alia: -

***“(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) .....***

***(4) .....***

9. The Applicant has not explained or given reasons for the 11 months’ delay in filing this Reference. I note that in their letter of 12<sup>th</sup> March, 2020, just a day after the delivery of the Taxing Officer’s ruling, he did object and sought reasons for the taxation. Odunga J in the case of *Evans Thiga Gaturu –Vs- Kenya Commercial Bank Limited [2012] eKLR*, had this to say on reasons for taxation: -

***“In most cases the court is aware that the taxing officers in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons thereafter. In such circumstances, it would be fool hardy to expect the taxing officer to redraft another “ruling” containing reasons.”***

10. It is now well settled that where a Deputy Registrar has delivered a Ruling after a Taxation, it would be superfluous to ask for reasons. In *Ahmed Nassir –Vs- National Bank of Kenya Ltd [2006] E.A* the court held thus: -

***“Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of Sub-rule (2) of Rule 11 of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”***

11. The Ruling delivered on 11<sup>th</sup> March, 2020, in the opinion of this court, contained reasons for the taxation. In my view, there was no need for the Taxing master to issue yet another ruling on the reasons for her decision. Furthermore, the Applicant did not attribute his delay in filing the Reference to none issuance of reasons for the Taxation. In *Twiga Motor Limited –Vs- Hon. Dalmis Otieno Onyango [2015] eKLR*, the Court stated: -

***“The limits in Rule II of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said time lines would mean that the application would be rendered incompetent in the first instance.”***

12. I find and hold that the Applicant herein failed to file his reference within 14 days per Paragraph 11 of the Advocates Remuneration Order. Further, the Applicant neither sought enlargement of time to file the Reference, nor did he advance reasons for the inordinate (**11 Months**) delay as required under paragraph 11(4) of the Order.

13. The Reference dated 14<sup>th</sup> February, 2021, is declared incompetent for having been filed outside the period allowed under the Advocates Remuneration Order.

14. Having declared the application incompetent, it will be an exercise in futility to address the issue of whether sufficient grounds have been advanced to warrant the setting aside of the Taxation of 11<sup>th</sup> March, 2020. I let it rest.

15. The upshot is that the application is dismissed.

16. I make no orders as to costs.

**SIGNED, DATED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF JANUARY, 2022**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

N/A for the Applicant

Ms. Weru present for the Respondent

Ms. Christine Omollo - Court Assistant