



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**MISCELLANEOUS NO. 25 OF 2019**

*(Before Hon. Justice Mathews N. Nduma)*

**J. R. S. GROUP LTD.....APPLICANT/OBJECTOR**

**VERSUS**

**OMONDI, ABANDE & CO. ADVOCATES.....RESPONDENT**

**RULING**

1. The Chamber summons application dated 11<sup>th</sup> January 2019 was filed on the even date the applicant praying for an order: -
  - i. That the decision of the taxing officer delivered on the 25/6/2019 on the Respondent's bill of costs dated 19<sup>th</sup> October 2018 be set aside.
  - ii. That the Honourable court be pleased to re-tax the Respondent's bill of costs dated 19/10/2018 or in the alternative the court be pleased to remit the bill of costs dated 19/10/2018 for re-taxation by a different taxing officer with appropriate directions.
2. The application is premised on the grounds that: -
  - a. The Taxing officer disregarded the fact that the plaintiff was awarded Kshs. 358,639 in the main suit.
  - b. That the taxing officer disregarded schedule 6 of the Advocates (Remuneration) order 2014 which provides for amounts advocates should charge as instruction fees.
  - c. In terms of schedule 6(1) thereof, The Advocates Remuneration Order 2014, provides that fees for instruction for a matter in which the value does not exceed Kshs. 500,000 to be Kshs. 75,000 and not Kshs. 120,000.
  - d. The taxing officer also failed to take into consideration that the item increased by half is the instruction fees which should be Kshs. 75,000.
  - e. The Claimant was awarded Kshs. 358,639 yet the taxing master awarded the Respondent Advocate costs in the sum of Kshs. 312,841.
  - f. The taxing master having committed errors in principle the Court has jurisdiction to interfere with the ruling accordingly.

**Grounds of Opposition**

3. The respondent filed grounds of opposition to wit: -
  - i. The application is incompetent, frivolous and vexatious and should be dismissed with costs.
  - ii. The criteria for grant of orders sought has not been met.
  - iii. The application has disregarded the provisions of paragraph 11 of the Advocates Remuneration Order 2014, as regards time within which to file such an application.
4. Both parties filed submissions.

## **Determination**

5. The application was brought in terms of rule 11 (1) (2) & (3) of The Advocates Remuneration Rules, Section 1A, 1B, and 3A and Order 5, rule I of the Civil Procedure Rules.
6. Rule 11 which is titled objection to decision on taxation and appeal to Court of Appeal reads:
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 sub – paragraph (2) may, with the leave of the Judge but not otherwise appeal to the court of Appeal. “
7. In the present matter, the applicant being dissatisfied with the ruling of the taxing office wrote a notice of objection seeking reasons from the taxing master dated 10/7/2019 following the bill of costs dated 19/10/2018.
8. Clearly, the notice of objection was done more than eight months from the date of the decision of the taxing master in total disregard of the provision of Rule 11(1) of The Advocates Remuneration Order.
9. The applicant has not advanced any reasons why there was inordinate delay in noting the objection to the taxing officer and in any event the applicant has not in the chamber summons application sought condonation for the late filing of the notice of objection and late filing of the application to the court.
10. The application is a blatant abuse of the provisions of The Advocates Remunerations Order and therefore an abuse of the process of the Court and it is dismissed with costs.
11. The court has considered HCCC No. 83 of 2015 **Labh Sing Harman Singh Ltd –VS- Attorney General & 2 others (2016) eKLR**, in arriving at this decision.
12. In the final analysis the application is dismissed with costs.

**Ruling Dated, Signed and Delivered at Nairobi this 25<sup>th</sup> day of June 2020.**

**Mathew N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Mana for Applicant/Objector

M. M.Omondi for Respondent.

Chrispo: Court Clerk.