



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

MISC CAUSE NO. 81 OF 2015

HAYANGA & CO ADVOCATES.....APPLICANT

VERSUS

MAJOR WILFRED KYALO KANGULYU.....RESPONDENT

RULING

1. Notice of Motion dated 19th February 2016, the Respondent/Applicant seeks orders that the court sets aside the ruling on taxation dated 16th December, 2015 and that the Advocates Bill of costs dated 26th August, 2015 be remitted for rehearing.
2. The application was brought on the grounds that the taxation was done ex-parte hence violated rules of natural justice and that there were compelling reasons that hindered the respondent from attending the taxation hearing. The application was supported by the affidavit of the respondent in which he deponed on the main that he was taken ill on 8th September, 2015 and taken to Migurani Sub County Hospital on 9th September, 2015 hence could not attend court to file his submissions.
3. He stated further that he received the Advocate's client bill of costs on 3rd September, 2015 hence did not have sufficient time to peruse through the 271 folios and prepare his response. He contended that as a matter of fact it was not viable for one living in the village to fully prepare and present a response to such a document within such a short time. The other depositions in the applicant's affidavit constitute matter which if the current application is allowed, should be canvassed before the taxing officer.
4. In opposing the application the claimant advocate through one Hellen Opile filed a replying affidavit deponing in the relevant part that the advocate-client bill of costs was served on the applicants on 3rd September, 2015 together with the taxation notice and that on 9th September, 2015 there was no appearance by the applicant. The Deputy Registrar gave a ruling date for 23rd October, 2015.
5. Further that on 8th October, 2015 the applicant served on the advocate a letter dated 14th September, 2015 addressed to the Registrar requesting for late filing of response to the bill since he was indisposed. Counsel also stated that on the same date the client served them with a response to the Bill of costs.
6. It is common ground that the applicant was not present when the Bill of Costs came up for taxation 9th September, 2015. It further not disputed that the applicants attempted to make a response to the Bill of Costs in writing. It was however his desire that he be heard verbally in court. The right to be heard is a fundamental principle of natural justice. A party must not be unduly denied their day in court. Oral

hearing should be preferred unless the parties consent to dispense with the same or a court for good reason to be recorded deem such hearing superfluous or unnecessary.

7. The applicant feels strongly that most of the items in the advocate's Bill of Cost are either inflated or unjustified. He ought to therefore be allowed to make representation on these items for what it is worth. Further the applicant has put forward reasonable grounds for his absence on the 9th September, 2015 when the matter came up for taxation.

8. In the circumstances, the court is satisfied that the application dated 19th February, 2016 is merited with consequence that the ruling on taxation dated 16th December, 2015 is hereby set aside and the Advocates Bill of costs dated 26th August, 2015 is hereby remitted for rehearing before the Deputy Registrar of the court.

It is so ordered.

Dated at Nairobi this 3rd day of February, 2017

Abuodha J. N.

Judge

Delivered this 3rd day of February, 2017

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent.

Abuodha J. N.

Judge