



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL MISC. APP. NO. 299 OF 2014

AKIDE & CO. ADVOCATES.....APPLICANT

VERSUS

KENINDIA ASSURANCE COMPANY LTD.....RESPONDENT

RULING

1. The subject matter of this ruling is the chamber summons dated 23rd September 2016 taken out by Akide & CO. Advocates whereof the applicant sought for an order for review and setting aside of the ruling of the taxing officer delivered on 19th September 2016. The summons is supported by the affidavit sworn by Patricia Wangari Gikunju.

2. Kenindia Assurance Co. Ltd, the respondent herein filed the replying affidavit sworn by Don Otury to oppose the application. Learned counsels recorded a consent order to have the summons disposed of by written submissions.

3. I have considered the grounds set out on the face of the summons plus the facts deposed in the rival affidavits. I have also considered the rival written submission plus the authorities cited. The main issue which this court has been called upon to determine is whether or not the taxing officer has jurisdiction to determine the competency of any bill of costs.

4. It is the submission of the applicant that the taxing officer does not have jurisdiction to determine whether a bill of costs is time-barred as it was done in this matter. The applicant pointed out that the jurisdiction of the taxing officer is set out in Order 49 rule 7(1) of the Civil Procedure Rules, 2010 which provision does not include the power to determine the competency of a bill of costs. It is stated that the jurisdiction to determine the competency of a bill of cost is the preserve of a judge.

5. The respondent on the other hand questioned the procedure adopted by the applicant to challenge the decision of the taxing officer. It is argued that the application to set aside the decision of the taxing officer is tantamount to an appeal on the face of record.

6. The respondent further argued that on the face of it, the applicant failed to follow the procedure relating to appellate procedure as stipulated by law. It is also stated that an application for review can only be made to the court which made the decision under Order 45 rule 1 of the Civil Procedure Rules.

7. In sum the respondent averred that the prayer for review of the taxing officer made on 19th September 2016 is improper and irregular. The respondent further argued that the taxing officer had jurisdiction to hear and determine the bill of costs and all issues raised pursuant to the bill of costs including the question of limitation and was therefore right to dismiss the bill of costs.

8. Having considered the rival arguments, it is not in dispute that the applicant's bill of costs dated 24.3.2014 was dismissed by the taxing officer on 19th September 2016 on the basis that the bill was time-barred under Section 4(1) (a) of the Limitations of Actions Act. The law does not specifically provide the procedure on how to challenge and or appeal against such a decision.

9. The applicant chose to file a summons to impugn the taxing officer's decision pursuant to the provisions of paragraphs 11(2) and 79 of the Advocates Remuneration Order 1997. The respondent has stated that the procedure adopted by the applicant is irregular hence the summons should be dismissed. It is the submission of the respondent that the applicant should have followed the procedure for appeals.

10. The applicant did not address this court over the preliminary issue raised by the respondent. A careful perusal of the Advocates Remuneration Order will reveal that the procedure prescribed for one to adopt in challenging a decision of a taxing officer is through a chamber summons. Therefore, whether one applies for review or appeals, the prescribed procedure is a chamber summons.

11. I am therefore convinced that the applicant has adopted the correct form and procedure in challenging the taxing officer's decision. Consequently, I find the applicant's summons to be competently and properly before this court. The respondent's preliminary objection is therefore overruled.

12. The remaining issue is whether the taxing officer had jurisdiction to determine whether the bill of costs was time-barred" I am persuaded by the decision of Justice Hatari Waweru in the case of **Abincha & Co. Advocates Trident Insurance Co. Ltd (2013) eKLR** where the learned judge expressed himself succinctly as follows

"The main issues raised in the motion dated 20th February 2012 were challenging the taxing officer's jurisdiction to tax the bill of costs before him. Those issues were whether the advocates bill of costs was statute barred under the Limitation of Actions Act and whether the advocate was estopped from claiming any further costs....."

.....

I hold that it was an issue that could only be determined by a judge. It is the kind of issue that the taxing officer, with consent of both parties, should have referred to the opinion of the High Court."

13. The powers of the taxing officer are set out under paragraph 13A of the Advocates Remuneration Order as follows:

For purposes of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, administer oaths, to direct the production of books, papers and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.

14. The above provision lays out the duties of the taxing officer and therefore anything done by the taxing officer outside what is prescribed therein is regarded as ultravires. The taxing officer was not authorized to determine the competency of the bill of costs but to only tax the bill of costs. The learned taxing officer therefore acted without jurisdiction when she held that the applicant's bill of costs was time barred.

15. In the end, the summons is allowed thus giving rise to issuance of the following orders:

i. The order dismissing the applicant's bill of costs issued on 19th September 2016 is set aside. Consequently the bill of costs dated 24th March 2014 is reinstated.

ii. The question as to whether or not the applicant's aforesaid bill of costs is statute barred to be referred to a judge to be heard afresh.

iii. Costs of the summons to await the outcome of the Bill of costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 9TH DAY OF
SEPTEMBER, 2021**

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent



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