



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL COURT)

MISC APPLI 660 OF 2007

OCCIDENTIAL INSURANCE CO. LTD. APPLICANT/CLIENT

VERSUS

MBUGUA & MBUGUA ADVOCATES RESPONDENT/ADVOCATE

RULING

The application under consideration has been brought by Occidental Insurance Co. Limited, herein after referred to as the client, against Mbugua & Mbugua Advocates, hereinafter referred to as the Advocate. It is brought under paragraphs 11 (4), 13 and 14 of the Advocates (Remuneration) Order and Section 3A and 44 (1) of the Civil Procedure Act.

There are four prayers, two of which are spent. In prayer 3 and 4, the client seeks:

- 1. That the time for filing the Notice of Objection to the taxation be enlarged and the Client/Applicant be allowed to file the Notice of Objection out of time.**
- 2. That costs be in the cause.**

There are 7 grounds cited on the face of the application in support thereof as follows:

(a) That the Client/applicant was never served with the Advocates Bill of Costs, Notice of Taxation, Notice of Motion to certify the taxed costs as judgment of the court or any other pleadings relevant to the Advocates taxation herein.

(b) That the Client/Applicant has been denied the opportunity to contradict the Advocates claim against it.

(c) That the taxation and subsequent proceedings irregularly unprocedurally and without the knowledge or consent whatsoever of the client/Applicant.

(d) That the Advocates/his Agents have attached the Applicant/Clients properties which are not liable to attachment of sale.

(e) That the Respondent's conduct is ethically deficient and is steeped in mala fides.

(f) That should this application not be allowed the Client/Applicant stands to suffer substantial loss and damage.

(g) That this application is brought in the interest of the preservation of Natural Justice.

The application is supported by an affidavit sworn

by **PURNIMAH GANDHI**, the Legal Officer of the client. In brief, Mr. Gandhi depones that the Advocate did not serve them with a demand for payment, the Bill of Costs, nor was the Notice of Taxation and the Notice of motion to certify the taxed costs, served on the Applicant. The Legal Officer also denies that the client has a legal officer by name **CATHERINE**, who the process server **SAMUEL WAWERU** purportedly served as deponed in the latter's affidavit of service "**PG 2**". The officers depones further that the only other officer who could receive service for the client, one **REBECCA EKAYA** and **RICHARD MOMBO**, have advised him that they too never received any service as alleged in the stated affidavit of service.

The application is opposed. There is a replying

affidavit sworn by **SAMUEL WAWERU**, a court clerk with the Advocate. In addition to annexing several processes served on the client, which do not relate to this case, the clerk has annexed a copy of the Bill of Costs and Notice of Taxation as '**SW 1**' and '**SW 2**' which he claims to have served on one **CATHERINE** at the offices of the client. The clerk depones that **CATHERINE** accepted service, stamped on the Bill of Costs "**SW 2**" but declined to sign it.

The law is very clear on who should be served on

behalf of a company. The Client/applicant herein is an Insurance Company. It has deponed that only three officers had the mandate to receive service on behalf of the Company. The three officers are named as **GANDHI REBECCA** and **RICHARD**. Even if these three officers could not be found, **SAMUEL WAWERU** should have tried to serve the Company officials of the Client/Applicant herein as provided under Order V of Civil Procedure Rules. The Client denies it has an officer by the name Catherine, who could receive service on its behalf. The fact that Samuel who served the process gave only one name of the person served, in light of the clients denial that such an officer existed in its Company, I find that the service in question was improper and in the circumstances the client was denied an opportunity to be heard during the taxation of the Bill of Costs by the taxing master. The proceedings were irregular and the Client has been caused to suffer prejudice. The service of the Notice of Motion in the taxation of the Bill of Costs having been irregular I find that the client is entitled to the orders sought as a matter of right.

The upshot of this application is that the same is allowed as prayed. The Client/Applicant seeks to

have enlargement of time to file a Notice of Objection out of time. I think that since there was no proper service for the Notice of Taxation of the bill of costs, the proper order to make is to set aside the entire taxation and the certificate of taxation together with all the consequential orders. The Bill of Costs should be taxed afresh, before the taxing master after proper service of the Notice of Taxation.

Those are the orders of this court. The costs of the application be in the cause.

Dated at Nairobi this 18th day of December 2007.

LESIT, J

JUDGE

Read, Signed and delivered in the presence of:

Mr. Masinde for the Respondent.

N/A for the applicant

In open Court

WARSAME, J

JUDGE



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