



**Ogolla v Onyango Otunga & Company Advocates (Civil Appeal E101 of 2023) [2023] KEHC 27214 (KLR) (27 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27214 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E101 OF 2023  
RE ABURILI, J  
DECEMBER 27, 2023**

**BETWEEN**

**GEORGE OGOLLA ..... APPELLANT**

**AND**

**ONYANGO OTUNGA & COMPANY ADVOCATES ..... RESPONDENT**

*(Being an appeal against the Ruling of Senior Principal Magistrate Hon. S. O. Temu, delivered on 3rd November 2022 in Nyando PMCC Misc. Appl. No. 10 of 2022)*

**RULING**

1. This appeal was filed to challenge the Ruling of the Taxing Officer Hon. S. O. Temu delivered on 3<sup>rd</sup> November 2022 vide Nyando SPM Misc. Civil Application No. 10 of 2022, Onyango Otunga & Company Advocates v George Ogolla.
2. The matter involved Advocate/Client Bill of Costs for professional legal services rendered by the advocate for the client who is the Appellant herein.
3. After the Advocate/Client Bill of Costs was filed vide application dated 29<sup>th</sup> June 2022, on 3<sup>rd</sup> November 2022, on 28<sup>th</sup> November 2022, the client, now Appellant wrote a letter to court seeking to be supplied with certified copies of proceedings and the Ruling on taxation to enable him lodge an appeal.
4. The appeal herein was lodged on 5<sup>th</sup> July 2023 vide Memorandum of Appeal dated 4<sup>th</sup> July 2023.
5. The lower court file was called for and it was availed to this court on 20<sup>th</sup> December 2023. The file was then placed in my chambers for admission of the appeal.
6. Ordinarily, the High Court admits all appeals once the lower court file is availed. However, admission of the appeal is not automatic. The court must examine whether the appeal is competently before it so



that an appeal is not admitted merely for parties to engage into academic exercise before the court. for example, where the appeal was filed out of time without leave of court being sought and obtained as stipulated in Section 79G of the *Civil Procedure Act*; or where an appeal only lies with leave of court as contemplated in Section 75 of the *Civil Procedure Act* as read with Order 43 of the *Civil Procedure Rules* or where the appeal does not lie at all; or where the appeal is filed in the wrong court, i.e where the proceedings appealed from emanate, not from a court exercising jurisdiction that is supervised by the High Court, for example, appeals from ELC or ELRC cases of the Magistrate's court do not lie to the High Court.

7. In other instances, the law specifically provides for specific modes of challenging the decision of the subordinate courts and not by way of appeal.
8. In this case, the appeal was filed nine (9) months after the decision of the taxing officer on the Advocate/ Client Bill of Costs.
9. It follows that, assuming that such an appeal lies, then it is stale as it was filed out of extremely long statutory timeline in that appeals in civil cases lie to this court within 30 days of the judgment or ruling, as stipulated in Section 79G of the *Civil Procedure Act*.
10. The same Section provides for an opportunity for a party to seek leave to enlarge time for filing the appeal.
11. This was not the case here. But even assuming that this was a case where leave could be sought and obtained to lodge the appeal out of time, there is no such reference to the order for leave to appeal out of time.
12. Accordingly, the appeal would be and is incompetently filed and this court has no jurisdiction to hear and determine an appeal filed out of time.
13. This is not enough. The appeal arises from the Ruling of the Taxing Master in Advocate/Client Bill of Costs.
14. Does an appeal lie to this court? really, from such order? Let's examine what the law provides, and why I have summarily rejected this appeal at the admission stage.
15. Paragraph 11 of the *Advocates Remuneration Order* provides as follows:-
  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 (14) 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 subsection 92) may, with leave of the Judge, but not otherwise, appeal to the Court of Appeal.
  4. The High Court shall have power in its discretion by order to enlarge the time fixed by sub paragraph (1) or sub paragraph (2) for the taxing of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three



clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already lapsed.

16. The above provision is the procedure for lodging objections to the decisions of the Taxing Officer. The provision is clear that even where such time for filing of objection has lapsed, on application, the court may enlarge such time.
17. In this case, the Ruling on taxation was made on 3<sup>rd</sup> November 2022. No objection was filed and no Reference was filed to this court.
18. What I have is an appeal against the taxation ruling. Even assuming that filing of an appeal is a procedural technicality which this court would ignore and determine the merits or substance thereof, the same was, as earlier stated, filed out of the 30 days contemplated in Section 79G of the *Civil Procedure Act* and also out of the 14 days contemplated in Paragraph 11 of the Advocates Remuneration Order for filing of References. Accordingly, this court has no jurisdiction to hear and determine stale proceedings.
19. The above provisions and determination notwithstanding, there is another aspect to this case which this court must determine, now that the proceedings of the lower court have been brought before it. The question is, did the lower court have jurisdiction to tax the Advocate/Client Bill of Costs?
20. This court exercises supervisory jurisdiction over the Magistrate's courts and tribunals as well as bodies and authorities exercising judicial or quasi-judicial or administrative authority. This is what Article 165 (6) and (7) of the *Constitution* provides.
21. It follows that this court cannot watch and not see and or not hear irregular proceedings being conducted and leave those proceedings to remain on record.
22. This court has the power to call for the record of proceedings of the lower court, examine and determine their propriety.
23. In the case before the lower court, the Advocate filed an application for taxation of the Advocate/Client Bill of Costs. The question is, did the Magistrate's court have the jurisdiction to tax the advocate/client bill of costs?
24. Jurisdiction is everything, without which, a court of law acts in vain. Jurisdiction cannot be conferred by consent of the parties and neither can a court of law arrogate itself of jurisdiction that it is not vested with. See the case of *Samuel Kamau Macharia and Another v. Kenya Commercial Bank Limited & 2 others* [2012] eKLR, Application No. 2 of 2011, by the Supreme Court.
25. Let's see what the law says on taxation of Advocate/Client Bill of Costs. Paragraph 10 of the *Advocates Act* provides that:

“The Taxing Officer for the taxation of bills under this Order shall be the Registrar or a District or Deputy Registrar of the High Court or, in the absence of a Registrar, such other qualified officer as the Chief Justice may, in writing appoint; except that in respect of bills under Schedule 4 to the order, the taxing officer shall be the registrar of trade marks or any Deputy or Assistant Registrar of Trade Marks.”
26. The advocate's bill of costs dated 29<sup>th</sup> June 2022 was taxed by Hon. S. O. Temu, Senior Principal Magistrate, Nyando Law Courts on 3<sup>rd</sup> November 2022. He signed the certificate of costs under that name and title on 8<sup>th</sup> November 2022.



27. There is no evidence that Hon. Temu was a Registrar, District or Deputy Registrar within the meaning of paragraph 10 of the Advocates Remuneration Order. His taxation of the Advocate's Bill of Costs against the client was therefore without jurisdiction and irregular as it is not supported by the law.
28. I hasten to add that the Advocate's Remuneration Order does not provide for the taxation of costs in the lower court in matters between Advocate and Client. Only party and party costs can be assessed by the same court that heard and determined the dispute.
29. On the whole, I find that the taxation of Advocate/Client Bill of Costs by Hon. Temu, SPM Nyando was without jurisdiction and was null and void.
30. Accordingly, the entire proceedings, Ruling and Certificate of Taxation all emanating from Nyando SPM Misc. Civil Application No. 10 of 2022 are brought into this court for purposes of quashing and are hereby quashed on account of irregularity and want of jurisdiction.
31. I make no orders as to costs as the advocate is at liberty subject to the statute of limitation, to file before the High Court, his bill of costs for taxation by the taxing officer or master as stipulated in law.
32. This Ruling to be typed and distributed to all Magistrates in this jurisdiction for noting and action.
33. This file is closed.
34. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF DECEMBER, 2023**

**R. E. ABURILI**

**JUDGE**

