



Ambe & another v Mang’erere Bosire & Associates Advocates (Civil Miscellaneous Application E031 of 2023) [2023] KEHC 26765 (KLR) (Civ) (21 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION E031 OF 2023
AN ONGERI, J
DECEMBER 21, 2023**

BETWEEN

SELINA AMBE 1ST APPELLANT

CAPACITY BUILDING & RESEARCH COMPANY LIMITED .. 2ND APPELLANT

AND

MANG’ERERE BOSIRE & ASSOCIATES ADVOCATES RESPONDENT

RULING

1. The application coming for consideration in this ruling is the reference dated 24/2/2023 seeking the following orders;
 - i. That the decision/ruling of the Hon Deputy Registrar (E. M. Nyakundi) dated 20/12/2022 in Misc Civil Application No E427 of 2021 be set aside and the matter be taxed afresh.
 - ii. That this honourable court be pleased to order that the execution of the decision/ruling delivered on the 20/12/2022 be stayed pending the hearing and determination of this application.
 - iii. That the costs of this application be provided for.
2. The application is based on the following grounds;
 - i. That the respondents advocate filed a bill of cost dated 3rd May 2021 in which they sought for a total sum of Kshs 672,381.40 against the applicant wherein the bill was finally taxed in the sum of Kshs 477,989.40.
 - ii. That the respondents’ claim for cost as against the applicant is in complete disregard of the instructions given and carried out by the respondents.



- iii. That the respondents bill of cost is in complete disregard of the fair quantum of work done by the advocates who had in fact handed over the applicants file to another advocate acting in the name and style of Tombe and Co. Advocates.
 - iv. That the learned Deputy Registrar failed to take into account important considerations and thereby arrived at a wrong decision.
 - v. That the decision made by the Learned Deputy Registrar is wrong in principle and unfair, unjust and biased in effect.
 - vi. That the applicant stands the risks of distress and attachment, due to an irregular taxation.
 - vii. That there exist errors apparent on the taxed down figure, to the gross harm of the applicant.
 - viii. That the Bill of costs as taxed is marred with irregularities, errors of principle hence due for merited interference.
 - ix. The taxation award on non-proved items is travesty and an illegality.
 - x. That the respondent will not at all be prejudiced if the orders being sought are granted so that the honourable court can have time to establish the claim and give declarations on the taxation or otherwise of the respondents' cost based on clear parameters and correct legal principles.
3. The application is supported by the affidavit of the applicant sworn on 24/1/2023 in which reiterates the grounds above.
 4. The application was opposed by the replying affidavit of Bosire Kennedy Mark dated 23/2/2023. In it he deponed that the orders sought herein are mischievous and depicts an abuse of court process as it raises extraneous issues not relevant to the matter in question.
 5. He further deponed that the appellant has not pointed out the alleged errors and/or illegality in as far as the ruling of the taxing master is concerned.
 6. The parties filed written submissions as follows; the applicant submitted that it is not in doubt that there was a further affidavit by the 1st respondent dated 29/11/2021 wherein the client prayed for a preliminary objection for the court to determine who the client instructed to which the Deputy Registrar admitted.
 7. That the said admission was not responded to by the applicant and the Deputy Registrar could therefore not rule on the issue.
 8. The applicant argued that the deputy registrar acted ultra vires by indulging as the litigant contrary to section 13A of the *Advocates Remuneration Order*. She was not sure why two different law firms were used and her reasoning was not sufficient.
 9. The applicant submitted that the firm of Tombe and Co Advocates was the one involved in executing this case for the appellant.
 10. That, a clear perusal of the proceedings indicated that that Mr. Tombe appeared on several occasions to represent the appellant, a funds transfer was dully paid to the said advocate who did the bulk of the work after the firm of Mangerere J had simply abandoned its client.
 11. It was the applicant's argument that this matter was not addressed and at no point had it been claimed by the applicants that Mr. Tombe was their employee and can only be presumed that he was acting in his own capacity.



12. The respondent alternatively submitted that the applicant has not substantially indicated or demonstrated the reasons to warrant the orders sought.
13. The respondent further contended that the taxing master addressed herself to the provisions of the remuneration order in arriving at her finding.
14. The issues as to who the applicant gave instruction was addressed by the taxing master in respect to the Preliminary Objection dated 6/1/2022.
15. That it was clear from the records that the respondent represented the applicant in HCCC No 74 of 2013 the subject matter for taxation herein.
16. The respondent submitted that the allegation of a forged signature is an afterthought. The matter proceeded for hearing until judgement and at no time did the applicant raise the issue.
17. The respondent argued that there is no change of Advocate as required by Law and as such the allegation of the Applicant being represented by Tombe & Co Advocates is irregular and/or illegal.
18. The respondent further argued that the applicant having enjoyed its legal services cannot purport to raise extraneous issues which are not relevant to avoid paying for legal services.
19. Further, that the applicant is taking advantage of the absence of advocate Tombe who is since deceased.
20. The issues for determination in this reference are as follows;
 - i. Whether the respondent was instructed to act for the applicant.
 - ii. Whether the taxing officer had the jurisdiction to tax the bill of costs.
 - iii. Whether the bill of costs should be set aside.
21. On the issue as to whether the respondent had instructions from the applicant, I find that a preliminary objection dated 6/1/2022 was raised by the applicant's advocates and the taxing master decided that the respondent's firm acted for the appellant.
22. The applicant did not appeal against the decision of the taxing master and the issue was settled and same therefore cannot be the basis of a reference.
23. In the case of *Wilfred N. Konosi T/A Konosi & Co. Advocates v Flamco Limited* [2017] eKLR, the Court of Appeal stated as follows;

“The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in *Taparn v Roitei* [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the Advocates Remuneration Order confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered. The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.



As a Judicial Officer sitting to tax a bill of costs between an advocate and his or her client, a taxing officer must determine the question whether he/she has jurisdiction to tax a Bill if the issue of want of advocate/client relationship is raised. An allegation that the advocate/client relationship does not obtain in taxation of an advocate/client Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question.”

24. I find that the Taxing master made a determination on the issue of retainer and no appeal was preferred against the said decision.
25. On the issue as to whether the taxing master who was based at the Anticorruption Division of the High Court had jurisdiction to tax a bill of costs filed in the Civil Division, I find the said taxing officer has jurisdiction to tax a bill of costs filed in any division of the High Court since he is a Deputy Registrar.
26. On the issue as to whether the bill of costs should be set aside, I find that the same was drawn to scale and there is no basis for setting it aside.
27. In the case of *First American Bank of Kenya v Shab and Others* [2002] EALR 64 at 69 in which Ringera J (as he then was) observed as follows;

“This court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors... some of the relevant factors include the nature and importance of the cause or matter, the amount or value of this subject matter involved, the interest of the parties, the general conduct of proceedings and any direction by the trial judge...not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him...”

28. I find that the reference herein lacks in merit and the same is accordingly dismissed.
29. Each party to bear it’s own costs of the reference.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
21ST DAY OF DECEMBER, 2023.**

.....

A. N. ONGERI

JUDGE

