



**Migos-Ogamba & Co. Advocates v Chemelil Sugar Co. Ltd (Miscellaneous Application 600 of 2018) [2022] KEHC 557 (KLR) (Civ) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 557 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS APPLICATION 600 OF 2018**

**SJ CHITEMBWE, J**

**MAY 31, 2022**

**IN THE MATTER OF THE ADVOCATES ACT CAP 16 OF THE LAWS OF KENYA  
AND IN THE MATTER OF THE ADVOCATES REMUNERATION AMENDMENT  
ORDER, 2014 AND IN THE MATTER OF COSTS BETWEEN ADVOCATE  
AND CLIENT AND IN THE MATTER OF A NON-CONTENTIOUS MATTER**

**BETWEEN**

**MIGOS-OGAMBA & CO. ADVOCATES ..... APPLICANT**

**AND**

**CHEMELIL SUGAR CO. LTD ..... RESPONDENT**

**RULING**

1. On 29<sup>th</sup> July, 2021, the Deputy Registrar after perusing the parties' submissions on Advocates/Clients Bill of Costs dated 15<sup>th</sup> November, 2018 declined to assume jurisdiction stating that the issue as to whether an advocate-client relationship exists needs to be determined first by a judge. She then referred the file to a judge of the High Court for hearing and determination.
2. The applicant, a firm of advocates, argue that it was engaged by the respondent to represent it in the Kenya Anti-Corruption Commission Inquiry regarding Sugar Importation: Sales Contract No. CSC-025-2005 and hence entitled to legal fees. In the present case, the applicant is seeking legal fees for correspondence it made to the Kenya Anti-Corruption Commission (KACC) on an inquiry relating to the said contract. In opposition, the respondent maintain that it had never instructed the applicant either to act and/or respond on its behalf in the KACC Inquiry.



### **Analysis & Determination;**

3. It is a correct statement of the law to state that for the taxing officer to embark on taxing a Bill of Costs, it must be established that there exists an Advocate/Client relationship and that the advocate was instructed in accordance with the law.

4 Section 10 of the *Advocates Act* provides;

“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.”

5. 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. Presently, the dispute raises a jurisdictional question as opposed to an issue outside the jurisdiction of the Taxing Master. This being a jurisdictional question on whether or not the Bill of Costs was properly before her for taxation, the Taxing Master had jurisdiction to determine the question whether there existed an advocate/client relationship.

6. The Court of Appeal decision in *Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited* [2017] eKLR held that:-

“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. A decision in taxation where an advocate/client relationship does not exist is a nullity for want of jurisdiction.”

7. The dispute before the Deputy Registrar was in the nature of an objection as to the validity of the Bill since the advocate/client relationship was disputed. It is this court’s finding that such an objection amounts to a preliminary objection which can be dealt with by the taxing master. Once the taxing master determines that issue, then the court would either tax the bill of costs or dismiss it for want of instructions from the client. Any party dissatisfied with the ruling of the taxing master can thereafter approach the High Court. I am satisfied that the taxing master can substantively deal with the issue as to whether instructions were issued to the advocate or not. The upshot is that the file is sent back to the Taxing Officer for hearing and determination of all the issues therein.

**DATED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF MAY 2022**

.....

**S. CHITEMBWE**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY 2022**

.....

**J.K. SERGON**



**JUDGE**

