



**Wambo Muyala and Company Advocates v Karithi (Miscellaneous Application  
360 of 2019) [2022] KEHC 11136 (KLR) (Civ) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11136 (KLR)

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

**CIVIL**

**MISCELLANEOUS APPLICATION 360 OF 2019**

**SJ CHITEMBWE, J**

**MAY 31, 2022**

**BETWEEN**

**WAMBO MUYALA AND COMPANY ADVOCATES ..... APPLICANT**

**AND**

**FRANK DAVID GATURA KARITHI ..... RESPONDENT**

**RULING**

1. On August 19, 2021, the deputy registrar after perusing the respondent's Notice of Objection dated July 8, 2021 declined to assume jurisdiction stating that the issue of retainer needs to be determined first by a judge and referred the file to this court.
2. The respondent filed a Notice of Objection dated July 8, 2021 on the grounds reproduced below;

"I deny owing the advocates any money. we had agreed I pay him a fee of kshs 40,000 and I pay the filing fees of kshs 70,000 which I did try to retrieve from his Mpesa Statement from Safaricom to show proof of payment, but because he had changed his line of ownership they have been archived.

The matter was never conversed as the defendant agreed to settle the matter out of court, but the lawyer refused to keep his word about the amount we had agreed I would pay him and he wanted to sign an agreement that I would give him 30% of the balance of the sale amount once the defendant pays and that's how I ended up filing the consent in person.

The matter was never conversed and the lawyer only drew the plaint, plaintiff statement and verifying affidavit which we had already agreed I pay him kshs 40,000 only and I paid him.



I am kindly asking the court for more time to try and retrieve my Mpesa statement for that period, the statements are taking time to retrieve because the number I used is no longer registered in my name and the statement have been archived.”

**Determination;**

3. 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. Differently stated, 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 bill of costs or whether there was an agreement on the fees payable. It was not necessary to refer the matter to a judge. This is because the issue raised is a jurisdictional question. I am fortified in this proposition, by the Court of Appeal decision in Wilfred N Konosi t/a Konosi & Co Advocates v Flamco Limited [2017] eKLR which 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.” (emphasis added)

5. I have nothing useful to add to the above proposition of the law, save to emphasize that the issue in question was perfectly within the jurisdiction of the taxing master because it was a jurisdictional issue.
6. There is no dispute as to whether the advocate was instructed to institute court proceedings. The taxing master is well placed to determine whether there was an agreement on the fees payable between the advocate and the client. Should it be found that there was no such agreement, then the taxing master shall proceed to tax the bill. On the other hand, if there is proof of agreement on the fees and that what was agreed upon was duly paid then the taxing master would decline to tax the bill of costs. The file is hereby sent back to the taxing master to determine the preliminary issue.

**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**

