



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC APPLICATION NO. 56 OF 2014

V. CHOKAA & CO ADVOCATES.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU.....RESPONDENT

JUDGMENT

The applicant filed this application seeking the following orders;

- a) That an order of the Deputy Registrar made on 13th march 2015 be set aside.
- b) That the costs of this appeal be paid for by the respondent

The applicant claimed that the respondent was his client and had not paid him fees for services rendered and filed an advocates/clients bill of costs for taxation. When served with the bill of costs, the respondents sought to have the bills struck out on several grounds including;

- a) There was no advocate/client relationship between the parties.
- b) The advocate did not seek the court's leave to file the bill of costs
- c) The filing of the bills was barred by the limitation of Actions Act.
- d) The applicant/advocate was not a legal entity which could sue in his firm's name.
- e) The County Government of Uasin Gishu is not the legal successor of the now defunct Municipal Council of Eldoret.
- f) The bills have no legal basis because the advocate never rendered any services to the Municipal Council of Eldoret.

The matter came up for taxation before the Deputy Registrar who heard the objection and struck the bill of costs out in a ruling given on 13th March 2015. They were struck out on the grounds that they were statutorily barred and the applicant had no legal capacity to present the bills and that the respondent was not the legal successor of the defunct municipal council. The applicant filed an appeal by way of Chamber Summons but the same was struck out as it did not comply with the provisions of *Order 47 Rule 8(2)* of the *Civil Procedure Rules*. The applicant filed Civil Appeal No. 43 of 2016 where the court of appeal directed that the matter be remitted to the High Court for re-hearing before another judge.

APPLICANT'S CASE

The applicant based the application on the grounds that the Deputy registrar did not have jurisdiction to hear the application and contravened *Order 49 rule 7(1)* by hearing the matter. The registrar erred by overlooking the High Court decision in *which* was binding on her.

Under *Order 47 Rule 7(1)* of the *Civil Procedure Rules* a Deputy registrar is a taxing master empowered to deal with all formal steps preliminary to the trial of a suit and deal with interlocutory applications in absence of a judge. What the deputy registrar was asked to deal with in the Notice of Motion dated 18th August 2014 was outside the ambit of order 47 rule 7. The matter came before her as a taxing master. The issues raised in the Notice of Motion were issues beyond the jurisdiction of the Deputy Registrar as a taxing master.

The issues were the kind of issues that the taxing officer with the consent of the parties should have referred to the High Court under *rule 12(1)* of the *Advocates Remuneration order*.

The deputy registrar had no jurisdiction to deal with the issues in the Notice of Motion dated 18th August 2014.

RESPONDENT'S CASE

The respondent filed submissions on 18th December 2019.

The Court of appeal has already determined in this matter that the Deputy Registrar had the jurisdiction to determine the propriety of the bill of costs presented before her. The respondents cited Eldoret Court of Appeal Civil Appeal No. 43 of 2016 and held that the registrar had jurisdiction to determine and hear the application dated 13th July 2015 challenging the appellant's bill of costs.

The applicant is estopped from challenging the jurisdiction of the deputy registrar as he filed a replying affidavit to the application and did not challenge the jurisdiction of the court. Further, the provisions of order 47 rule 7 give the Deputy registrar the jurisdiction to determine all interlocutory and preliminary applications. The application was preliminary in nature.

The applicant's application is incompetent as it is not a reference under paragraph 11 of the Advocates Remuneration Act (2014) and no taxation was made to merit the reference of the matter to the judge. The respondent relied on the case of Abincha & Co. Advocates vs Trident Insurance Co. Ltd and submitted that it is distinguishable from the case herein as it was challenging the deputy registrar's jurisdiction to tax bills of costs before him while the application dated 30th March 2015 related to an application striking out the applicant's bill of costs. The said case further affirmed that a decision of a registrar dismissing the bills of costs cannot be challenged by way of an application to the judge in chambers. The present application is therefore incompetent. The deputy registrar has powers to hear the application by virtue of the provisions of paragraph 13A of the Advocates Remuneration Order.

The deputy registrar held that the applicant did not demonstrate that he rendered professional services to the respondent. She held that the court had no jurisdiction to order the respondent to pay pre-existing liabilities before the transition as authority gave its criteria on how assets and liabilities of the defunct municipal council should be shared. The bills of costs were not properly before her as there was no accompanying application. Further, they were time barred and the applicant should have sued in his own capacity trading as the business name.

The applicant did not annex any letter of instructions while filing its bill of costs.

The respondent cited the case of Wanga & Company Advocates vs APA Insurance Company Advocates, Eldoret HC Application No. 24,17,18,19,20 and 22 of 2006) to buttress this point. The letter annexed by the applicant as proof of instructions is dubious as the action is not specified and the firm was not prequalified to provide any services to the council in the year 2007/08. The alleged defaulters are not listed in the letter. The date of the letter differs from the date of instructions in the bill of costs.

The applicant has fabricated demand letters to the alleged defaulters. The letters were originals and have no proof of service. They do not have the plot numbers and do not invoke any instructions from the Municipal Council. The letters were also issued 4 years from the alleged date of instruction. The applicant admitted that instructions were withdrawn from him.

The claim is outside the six-year period prescribed by the Limitation of Actions Act under section 4(1). Further, the respondent disputes that it is liable to pay all the liabilities due to the Municipal Council of Eldoret without proper transfer

of such liabilities by the transition authority. The authority is responsible for providing guidance on the issue of transfer of assets and liabilities. It relied on

the case of **Republic vs The County Secretary, Murang'a County Government, Murang'a High Court Judicial Review No. 1 of 2013.**

The court was urged to dismiss the application with costs.

ISSUES FOR DETERMINATION

a) Whether the order of the Deputy Registrar made on 13th March 2015 should be set aside.

The main ground relied upon for the setting aside of the order is that the Deputy Registrar did not have the jurisdiction to hear the objections to the bills of costs that resulted in the striking out of the bills. The bills' propriety was brought into question and as a result they were struck out.

The Deputy registrar determined the propriety of the bills before her as a taxing officer. In **C.B. Gor & Gor v Oriental Commercial Bank Limited (formerly known as Delphis Bank Limited) [2018] eKLR** the Court of Appeal held at para. 25;

To us, the contention that the taxing master's jurisdiction is limited to only taxing bills of costs hence he/she could not handle an application challenging the competency of the bills in question does not hold water. More so, paying regard to paragraph 13A of the Advocates (Remuneration)

Order which stipulates:

“For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.” [Emphasis added]

The above provision surely must mean that a taxing master who is charged with the duty of taxing bills of costs must also have the power to determine an objection as to the competency of the bill.

In the premises the application fails in its entirety as it was founded on want of jurisdiction. The Deputy Registrar has the powers to determine an objection as to the competency of a bill despite serving as a taxing master and that is what was done in this matter. The court of appeal in redirecting this matter for hearing in Eldoret Civil Appeal No. 43 of 2016 made the same observation.

Notably, the application is incompetent as an appeal cannot be filed by way of an application but by a memorandum of appeal preceded by an endorsement by the deputy registrar.

The application fails and is hereby dismissed with costs.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 10th day of March, 2020

In the presence of:

Mr. Chokaa for the applicant

Mr. Korir holding brief for the Respondent.

Mr. Gregory – Court assistant