



Munzala & another v Emily Kadenyi t/a Emily & Associate Advocate (Environment & Land Miscellaneous Case E004 of 2023) [2023] KEELC 21519 (KLR) (14 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21519 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND MISCELLANEOUS CASE E004 OF 2023
DO OHUNGO, J
NOVEMBER 14, 2023**

BETWEEN

BONIFACE KARANJA MUNZALA 1ST APPLICANT

ROSE MUSUNGU MUNZALA 2ND APPLICANT

AND

EMILY KADENYI T/A EMILY & ASSOCIATE ADVOCATE RESPONDENT

RULING

1. By Notice of Motion dated 20th February 2023, the applicants seek the following orders:
 1. [Spent]
 2. [Spent]
 3. That upon granting the Order of Stay above the Certificate of Taxation dated the 15th March, 2022 and all consequential Orders be set aside *ex debito justitiae*.
 4. That the Certificate of Taxation dated the 15th March, 2022 arising from the taxation of the Bill of Costs dated the 9th June, 2021 by Emily and Associates as against the applicants herein in Chief Magistrate's Court at Kakamega, MCL&E No 2B of 2022 and all consequential orders be struck out.
 5. That in the alternative and without prejudice the time to file a reference be enlarged and the Applicant is at liberty to file a reference.
 6. Any other Orders that this Honourable Court may deem fit to grant to serve the ends of justice.
 7. That the costs of this Application be provided for.



2. The application is supported by an affidavit sworn by the second applicant. She deposed that the respondent who had represented them in Kakamega MCL&E 2B of 2022, filed an advocate/client bill of costs against them. That the said bill was filed in Kakamega MCL&E 2B of 2022 and taxed by a magistrate instead of being filed as a miscellaneous cause in the Superior Courts for taxation by a Deputy Registrar. She contended that the Subordinate Court did not have jurisdiction to tax an advocate/client bill of costs.
3. The respondent opposed the application through a replying affidavit in which she deposed that the bill was properly filed and taxed in the Subordinate Court.
4. The application was canvassed through written submissions which both sides duly filed. I have considered the application, the affidavits, and the written submissions. The issues that arise for determination are whether an advocate/client should be filed in the same suit where the advocate rendered her services, whether the Subordinate Court had jurisdiction and whether the reliefs sought should issue.
5. There is no dispute that the bill that the respondent filed was an advocate/client bill of costs as opposed to a party and party bill of costs. It is also not contested that the bill was filed in the Subordinate Court in Kakamega MCL&E 2B of 2022, the same suit where the respondent represented the applicants. The fees or costs claimed in the advocate/client bill of costs were in respect of the said representation.
6. Rule 13 of the *Advocates (Remuneration) Order* makes it mandatory that an advocate/client bill of costs be filed in a miscellaneous cause. It provides as follows:

Taxation of cost as between advocate and client on application of either party

- (1) The taxing officer may tax costs as between advocate and client without any order for the purpose upon the application of the advocate or upon the application of the client, but where a client applies for taxation of a bill which has been rendered in summarized or block form the taxing officer shall give the advocate an opportunity to submit an itemized bill of costs before proceeding with such taxation, and in such event the advocate shall not be bound by or limited to the amount of the bill rendered in summarized or block form.
 - (2) Due notice of the date fixed for such taxation shall be given to both parties and both shall be entitled to attend and be heard.
 - (3) The bill of costs shall be filed in a miscellaneous cause in which notice of taxation may issue, but no advocate shall be entitled to an instruction fee in respect thereof.
7. Thus, an advocate/client bill of costs should not be filed in the same suit where the advocate rendered her services. It must be filed in a miscellaneous cause.
 8. It is also important to note that no leave is required when an advocate/client bill of costs is filed by the advocate. On the other hand, a client must obtain leave before filing an advocate/client bill of costs. As to the place or court before which an advocate/client bill of costs is to be filed, one only needs to look at Rule 10 of the *Advocates (Remuneration) Order* which defines taxing officer for the taxation of bills as the registrar or deputy registrar of the High Court and by extension courts of equal status or in the absence of a registrar, such other qualified officer as the Chief Justice may appoint in writing.
 9. Strictly speaking, no bills of costs are expected to be filed in the Subordinate Court. Whenever parties need to have party and party costs determined in the Subordinate Court, they simply write to the court



a letter itemising what they deem to be their costs. The court then assesses such costs as opposed to taxing a bill.

10. In view of the foregoing, it is clear that the Subordinate Court and Hon Hazel Wandere did not have jurisdiction to tax the advocate/client bill of costs. As has repeatedly been stated by the courts, jurisdiction is key in all judicial proceedings. Jurisdiction is everything, the be-all and end-all, without which the proceedings come to a certain end and the court cannot make any further step. See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR and *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR. An order made in the absence of jurisdiction is a nullity and of no use to the parties.
11. As the Court of Appeal stated in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] eKLR, a suit filed in a court without jurisdiction is dead on arrival and cannot be remedied since such a court cannot confer jurisdiction on itself.
12. The respondent has argued that the applicants should have filed a reference. However, the procedure for filing references contemplates a situation where a bill is properly filed and taxed. There is no known procedure for filing a reference when an advocate/client bill of costs is improperly filed before a magistrate who then proceeds to purport to tax it within the suit in respect of which the advocate rendered her services.
13. In view of the foregoing discourse, I am persuaded that the applicants have made a case for setting aside of the certificate of taxation, in the interest of justice. The advocate will have to file a proper advocate/client bill of costs and have it taxed in the manner provided by law.
14. I therefore make the following orders:
 - a. The Certificate of Taxation dated 15th March 2022 and all consequential orders are hereby set aside.
 - b. Considering that there is no dispute that the advocate represented the applicants, I make no order as to costs of Notice of Motion dated 20th February 2023.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 14TH DAY of NOVEMBER 2023.

D. O. OHUNGO

JUDGE

