

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

MISC. CIVIL APPLICATION NO. 43 OF 2014

**ROBINSON ONYANGO MALOMBO T/A O.M. ROBINSON & CO.
ADVOCATES.....APPLICANT**

VERSUS

**COUNTY GOVERNMENT OF KILIFI
RESPONDENT**

RULING

The notice to motion dated 16th March, 2016 seeks the following orders:

1. **THAT judgment be entered for the applicant against the respondent for the sum of Kshs.19,756,764.28 being the sum taxed and certified by the deputy registrar.**
2. **THAT the costs of this application be provided for.**

The application is supported by the affidavit of Mr. Robinson Onyango Malombo sworn on 16th March, 2016. Mr. Bwire Okano Advocate filed a replying affidavit sworn on 16th April, 2016. Parties relied on their respective pleadings.

The dispute herein involves a client/advocate bill of costs. The affidavit was instructed by the respondent to draft a some legislation – Kilifi County ward Scholarship Fund Administration Bill. This was in October, 2014. It appears that the applicant did the work but was not paid for his services. The applicant filed this bill of costs and the same was taxed by the taxing master at Kshs.19,756,764.28.

It is the applicant's contention that no payment has been done and no reference against the taxation has been filed. He therefore seeks judgement against the respondent for the amount. Taxed.

On his part, Mr. Bwire, counsel for the respondent avers in his affidavit that the respondent wrote to the taxing master seeking reasons for the taxation. There was no response and the respondent opted to proceed and file a reference. The reference was listed for hearing on 17th May 2016. It is averred that the current application is pre-mature. If granted, the application will render the reference nugatory.

I have carefully read the pleadings herein. It is clear to me that the respondent is challenging the amount awarded as instruction fees. The reference was to be heard on 17th May, 2016 but did not proceed. The applicant is well within his rights to seek judgement against the respondent. The amount he is claiming is based on a finding by the taxing master. It is not an amount sit and determine the reference.

Given the facts herein, I do find that the application is premature. The respondent is hereby ordered to fix its reference for hearing within the next forty five (45) days hereof. The application dated 16.3.2016 is hereby dismissed with no orders as to costs.

Dated and delivered this 31st day of May, 2016.

S.J. CHITEMBWE

JUDGE