

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANOUS CIVIL APPLICATION NO 59 OF 2015

IN THE MATTER OF ADVOCATES ACT CHAPTER 16 OF THE LAWS OF KENYA AND THE
ADVOCATES (REMUNERATION) (AMENDMENT) ORDER 1997

MWANGI KENGARA & COMPANY ADVOCATES.....ADVOCATE /RESPONDENT

VERSUS

INVESCO ASSURANCE COMPANY LIMITED.....CLIENT/APPLICANT

DIRECTIONS

The Applicant herein filed a Notice of Motion dated 27th April 2016 seeking orders that the Bill of Costs herein be struck out and dismissed for being in contravention of section 48 and section 45(6) of the Advocates Act, and for being time barred under section 4 of the Limitation of Actions Act. The Respondent filed a replying affidavit thereto. On 28th April 2015 the parties herein appeared before the Deputy Registrar of this Court who is the taxing officer under the Advocates Act for hearing of the Notice of Motion, and the Deputy Registrar ruled that the orders sought in the application are outside the jurisdiction of a taxing officer and referred the matter to this Court for hearing.

The parties now seek directions on the issue of the taxing officer's jurisdiction in this matter, arguing that the Deputy Registrar had delivered a ruling on 6th April 2016 on a similar application dated 10th November 2015.

I have perused the Court record and note that the ruling delivered by the Deputy Registrar on 6th April 2016 were not on the substantive orders of the Notice of Motion dated 10th November 2015, but on a preliminary objection on whether the said application of was *res judicata* and *sub-judice*.

I also note that the powers and jurisdiction of a taxing officer set out in **paragraph 13A** of the Advocates (Remuneration) Order are in connection with taxation of the bill of costs before him. That paragraph states –

“13A. For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, administer oaths, to direct the production of books, papers 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.”

“Any matter in dispute before him” means any matter connected with or concerning the taxation of any item in the bill of costs. The main issues raised in the Notice of Motion dated 27th April 2016 are whether the Advocate's bill of costs was statute-barred under the Limitation of Actions Act and whether the Advocate was estopped from claiming any further costs.

Similar issues arose in Abincha & Co Advocates v Trident Insurance Co Ltd, [2013] eKLR, and Waweru J held as follows therein:

“18. Those issues were raising one fundamental issue, to wit, whether there were any costs due to the Advocate that the Taxing Officer could tax? I hold that it was an issue that can only be determined by a Judge. It is the kind of issue that the Taxing Officer, with the consent of both parties, should have referred to the opinion of the High Court.

19. Only after determination of that fundamental issue by the High Court, that is, whether or not there were any costs due to the Advocate that could be taxed, would the bill of costs be referred back to the Taxing Officer for taxation, if it is found that there were costs that were due to the Advocate.”

I wholly adopt this finding and agree with the Deputy Registrar’s ruling on jurisdiction. The Notice of Motion dated 27th April 2016 shall accordingly proceed to hearing before a Judge in the Machakos High Court.

Dated at Machakos this 16th day of November 2016.

P. NYAMWEYA

JUDGE