

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC.CIVIL APPLICATION No. 26 OF 2014

PROF. NIXON SIFUNA PLAINTIFF

VERSUS

ASMAN OMAR WAFULA DEFENDANT

R U L I N G

1. This taxation cause was filed by the firm of Sifuna & Advocates (The applicants) against its former client, Asman Omar Wafula a.k.a Wafula A.O Mutacho, in Kitale Election Petition No. 7 of 2013. The Notice of Motion dated 4th June 2014 is brought under the provisions of the Advocates Act (Cap 16 L.O. K.) and the Advocates Remuneration Order. It essentially seek orders that the Advocate / client Bill of costs in the aforementioned Kitale Election Petition No. 7 of 2013, dated 9th January 2014, be taxed as drawn.
2. The grounds in support of the application are those contained in the body of the notice of motion and are enhanced by the averments made by the Applicants in their supporting affidavits dated 4th June 2014 and 16th February 2015, respectively.

Grounds of opposition were filed by the respondents on 24th June, 2014, together with a replying affidavit which was enhanced by a supplementary affidavit dated 12th February 2015. Both parties filed their respective submissions as directed by the court.

Having considered the rival submissions, it became apparent to this court that the basic issue for determination is whether the applicants' Bill of costs dated 9th January 2014, should be taxed by the Deputy Registrar Taxing master as drawn.

3. In essence, taxation is a process which falls within the domain or jurisdiction of the Deputy Registrar of this court as provided in paragraph 13A of the Advocates Remuneration Order, 2009. Thus, for the purpose of any proceedings before him, the taxing officer has the power and authority to summon and examine witnesses, administer oaths and direct the production of books, papers and documents and adopt all such other proceedings as may be necessary for determining any matter in dispute before him.
4. In the opinion of this court :any matter in dispute” may include an issue pertaining to the jurisdiction of the taxing officer to deal with the taxation cause itself. Such an issue may duly be presented to the judge as an appeal or reference from the decision of taxing office on the same and any other matter.

In *Sharia vs Uhuru Highway Dev. co. Ltd. (2001) 2 EA 530 the Court of Appeal* observed that there being no appeals or reference to the judge as provided for by paragraphs 11(1) and (2) and paragraph 12 of the Remuneration Order, and the taxation cause not being a suit filed in the High Court for the recovery of costs, the Judge was not seized of the taxation itself and had no jurisdiction at all to hear as he did the respondent's application to strike out the case.

5. Herein, the respondent is also asking this court to state all the taxation cause by dismissing the present application but this would not be possible on the main ground that the jurisdiction to do so is lacking and is currently vested in the Deputy Registrar of this court and more so because the respondent has failed to cogently demonstrate that an agreement for costs had been entered

between himself and the applicant. Such an agreement would be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized on their behalf(see S.45(1) Advocates Act).

There was no such agreement produced herein by the respondent. The annexures upheld “ AON 1 a – e”. The supplementary affidavit dated 12th February 2015, would not suffice as proof of the existence of an agreement between the respondent and the applicant.

6. Had the respondent established the existence of an agreement for costs between him and the applicant, the jurisdiction of the Deputy Registrar in dealing with the taxation cause would not exist by the duty of S.45(6) of the Advocates Act. It is instructive to note that the taxation cause before the Deputy Registrar is not a suit for the recovery of advocates costs. Therefore, S.48 of the Advocates Act would not apply in the present circumstances. In any event under Section 48(3) of the Advocates Penal Act, a bill of costs between an Advocate and client may be taxed notwithstanding that no suit for the recovery of costs has been filed.
7. All in all, the respondent's objection to the present application is hereby overruled. The application is granted as prayed with costs.

J. R. KARANJA

JUDGE

Read and signed this 26th day of May 2015.

J. R. KARANJA

JUDGE