



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CIVIL APPLICATION NO.1121 OF 2013**

**NYAMOGO & NYAMOGO ADVOCATES .....APPLICANT**

**VERSUS**

**PAN AFRICA INSURANCE COMPANY LIMITED .....1<sup>ST</sup> RESPONDENT**

**APA INSURANCE COMPANY LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

The applicant herein, Nyamogo & Nyamogo Advocates represented by Mr Nyamogo Advocate was the plaintiff in Milimani CM CC NO. 12625 of 2006 wherein he had sued he respondents herein Pan Africa Insurance Company Limited and APA Insurance Company Limited for recovery of taxed costs.

The said suit, from the scanty record contained herein, was compromised by the parties before the hearing, with the respondents paying to the plaintiff kshs 69,975.75 cts, following judgment on admission recorded on 24<sup>th</sup> September 2012, upon which the plaintiff therein was also allegedly awarded costs of that suit and interest to be assessed or taxed.

The costs in the said suit were never agreed upon. Consequently the plaintiff, who is the applicant herein filed this miscellaneous cause, seeking to have party and party costs as drawn vide party and party bill of costs dated 26<sup>th</sup> November, 2013 and filed in court on the same day taxed by the Deputy Registrar of this court.

The mater came up before Honourable A.K. Ndungu Deputy Registrar on 22<sup>nd</sup> July 2014 and Mr Maruti advocate for the respondent raised the issue of whether the party and party costs could not be taxed in the same suit wherein the costs were awarded instead of filing a separate cause herein. In Mr Maruti's view, only advocate/client bill of costs could be filed in the High Court for taxation.

Mr Nyamogo advocate/applicant on the other hand contended that both parties were in Nairobi that is why the bill herein was filed in Nairobi High Court and that not all costs were assessed at the lower court. Mr Nyamogo was then ordered to serve the bill upon the respondents and by consent, a hearing was set for 7th August 2014.

On 7<sup>th</sup> August 2014, the matter came before Honourable F.R. Wangila Deputy Registrar and Mr Nyamogo once again clarified that the bill before court was party and party costs between an advocate and client brought under paragraph 15(7) of the Advocates Remuneration Order. He asked the Deputy Registrar to tax the bill as drawn since it was drawn to scale.

In response, Mr Maruti submitted that they disputed a number of items in the bill and were not sure if the 2<sup>nd</sup> respondent had been served. He urged that they dispose of the issues by way of written submissions.

Mr Nyamogo opposed the response by Mr Maruti arguing that there was no order made on 22<sup>nd</sup> July 2014 for service of the bill upon anybody and that as Mr Maruti was not holding brief for Mereka & Company Advocates for the 2<sup>nd</sup> respondent, he had no authority to speak on their behalf. He also opposed the suggestion that the parties file written submissions contending that Article 159 of the Constitution was in favour of expeditious disposal of matters and that as far as he was concerned, he had already submitted on taxation of the bill hence the issue of filing of written submissions was overtaken by events.

In a rejoinder, Mr Maruti submitted that he needed to respond to the bills by way of written submissions since he had only been served on 28<sup>th</sup> July 2014.

The Deputy Registrar ordered that the 1<sup>st</sup> respondent files written submissions to object to the itemized bill within 7 days from 7<sup>th</sup> August 2014 and the applicant was also given 7 days from date of service to respond thereto. The matter was slated for 8<sup>th</sup> August 2014 to confirm compliance and for taking of a date for ruling. The matter was later fixed for taxation on 17<sup>th</sup> September 2014 when nothing transpired on 18<sup>th</sup> August 2014.

On 17<sup>th</sup> September 2014 Mr Nyamogo complained that the 2<sup>nd</sup> respondent who had not been participating in the matter had nonetheless sneaked in their written submissions. He urged the court to expunge their submissions from the record. However, Mr Thuo advocate for the 2<sup>nd</sup> respondent maintained that it was his client's right to be heard.

Mr Anyona for the 1<sup>st</sup> respondent also concurred with Mr Thuo's submission that all parties should be given an opportunity to be heard so that the court could look at the issues involved on merit.

The Deputy Registrar ruled that it was fair when all parties participate in the proceedings so that a case could be heard on merits by the parties availing all the evidence and information before the court and that it was not fair to lock out a party who had shown interest in the case. She therefore allowed the 2<sup>nd</sup> respondent's submissions already filed by them as being properly on record and granted the applicant leave to 7 days to respond to the said submissions. She also condemned the respondent to pay to the applicant costs of kshs 10,000 to be included as part of the taxed costs.

After considering all the submissions filed by the parties for and against the filed party and party costs, the Deputy Registrar, by her ruling dated 25<sup>th</sup> day of February 2015 found that the applicant could not file a party and party bill of costs on a case which had been determined in the lower court to be determined by the Deputy Registrar of the High Court. She also found that party and party costs could only be taxed in the same case file and that only advocate/client bill of costs could be taxed by the Deputy Registrar of the High Court. She therefore struck out the bill of costs as filed herein with no orders as to costs. She also granted the applicant leave to pursue his costs if any in the right forum.

It is that ruling that prompted the applicant herein to file the chamber summons dated 8<sup>th</sup> April 2015 filed on the same day under paragraph 11(1) and (2) of the Advocates Remuneration Order by way of reference contending that:

1. The Learned taxing officers misdirected herself with respect to her jurisdiction in taxing bills of costs.
2. The learned taxing officer abused her jurisdiction when she purported to review, sit on appeal over an earlier decision of the court of equal jurisdiction.
3. The learned taxing officer acted without jurisdiction when she purported to make final orders in a matter upon which she had found herself without jurisdiction.

4. The learned taxing officer having determined that her court was not the right forum had no jurisdiction to make any other/further orders in the matter.
5. The learned taxing officer erred in purporting to strike out the bill of costs yet in the same breath purporting to grant leave to pursue the same costs in the right forum.
6. The learned taxing officer fell into error by granting orders which were neither sought nor urged before her while failing and or declining to tax the bill of costs.

In the applicant's view, the taxing officer had no jurisdiction nor discretion to disturb (sic) and urged the court to remit the bill to the taxing officer to retax the same according to the law, and award him costs of the reference.

Mr Nyamogo also swore a supporting affidavit reiterating the grounds above as reproduced, challenging the jurisdiction of the taxing officer to refuse to tax the bill of costs on the ground that she had no jurisdiction to tax party and party bill of costs for a matter which was pending before the magistrate's courts. He maintained that the ruling/order by the taxation officer was an illegality and flew in the face of the Advocates Remuneration Order and was incurably defective for non-compliance with the law. He also complained that the taxing officer had refused to provide reasons for her decision. He annexed copies of letters asking for the reasons.

According to Mr Nyamogo, what the taxing officer was expected to do, was to simply tax the bill as presented and not to down her tools the way she did and that she should not have made further orders hence her decision had no basis.

The chamber summons referred to above was opposed by the 2<sup>nd</sup> respondent who filed grounds of opposition dated 4<sup>th</sup> June 2015 contending that:

1. The ruling by the taxing master was well grounded in law and the application herein lacks merit and should be dismissed with costs.
2. That the taxing master acted within the law when she gave directions to the parties on the manner in which the taxation was to proceed.
3. The taxing master properly ruled that she did not have jurisdiction to entertain matters filed or arising from the Chief Magistrate's Court in a party and party bill of costs.
4. The taxing master struck out the bill of costs which automatically gives the aggrieved party a right to have their costs assessed in the right forum.
5. Paragraph 13A of the Advocates Remuneration Order denotes power to the taxing master to grant any order she deems fit and necessary for the determination of any matter.
6. The application is an abuse of the court process and should be struck out with costs.

The parties appeared before me on 26<sup>th</sup> June 2015 and argued the application orally. Mr Nyamogo Ochieng advocate appeared in person whereas Miss Abok advocate appeared for the 1<sup>st</sup> respondent and also held brief for Mr Maruti for the 2<sup>nd</sup> respondent.

Mr Nyamogo submitted that there were no reasons for the decision made by the taxing officer despite the fact that he had written to her seeking for such reasons.

Further, that the taxing officer had jurisdiction to tax the party and party bill of costs in accordance with paragraph 10 of the Advocates Remuneration Order. In addition, that she had the jurisdiction to tax party and party bills of costs as well as party and party bills of costs from a magistrate's court.

Mr Nyamogo maintained that the taxing officer misdirected herself as to her jurisdiction and also abused her jurisdiction to the extent that the issue of proper court had been determined by Honourable Ndungu Deputy Registrar before the bill was set down for taxation on 7<sup>th</sup> August 2014. In his view, the only matter that could be placed before a taxing officer is to tax the bill of costs and not to decline on the basis that she had no jurisdiction thereby erroneously dismissing the

bill of costs.

In his view, if she had no jurisdiction then the taxing officer could not dismiss the bill of costs or even grant leave for the matter to be taken up in the right forum. Mr Nyamogo urged the court to allow the reference with costs.

In opposing the application, Miss Abok relied on the grounds of opposition and submitted that paragraph 13A of the Advocates Remuneration Order bequeaths upon the taxing officer power to make any order hence the taxing officer made the right orders by finding that she had no jurisdiction to tax party and party bill of costs. In addition, that party and party bills of costs in the lower court could only be assessed by the Executive Officer.

Miss Abok also submitted that there having been no taxation, a reference under paragraph 11 of the Advocates Remuneration Order did not lie is incompetent and an abuse of the court process as there was nothing from the ruling of the taxing officer to be challenged. She urged the court to strike out the reference .

In a brief rejoinder, Mr Nyamogo argued that he had complied with paragraph 11 of the Advocates Remuneration Order by requesting for reasons for taxation and the taxing officer also complied with the same paragraph by stating that the reasons were contained in the ruling hence the decision was not made judiciously. He submitted that the Deputy Registrar having mentioned that there was a bill for taxation, she should not have declined to tax the same.

I have anxiously considered the chamber summons by Mr Nyamogo, the grounds thereof, the supporting affidavit , grounds of opposition and the parties oral rival submissions. I have also considered the history of this matter as contained in the record before me. The main issue for determination , in my humble view, is whether the taxing officer( Deputy Registrar) was correct in finding that she had no jurisdiction to tax the party and party bill of costs arising from a matter before a magistrates court and if so, what orders should this court make. There are other many ancillary questions that his court will consider and determine alongside the main issue above.

I shall commence from the very important issue of jurisdiction, and state that a court of law exists to exercise jurisdiction. The matters raised before this court and before the Deputy Registrar were far from being technical or procedural technicalities. They were substantial and require a finding. Jurisdiction is everything without which, a court of law acts in vain. In my view, what the respondents raised before the Deputy Registrar when she was called upon to tax a bill of costs that was between party and party in a matter which had been determined in the lower court between the same parties was a preliminary objection, on whether or not the Deputy Registrar had jurisdiction to tax such a bill. And the Deputy Registrar did take up and consider and determined that preliminary objection to taxation to the effect that she had no jurisdiction to tax party and party bill of costs relating to a matter determined in the Chief Magistrate's Courts.

The question is, did the Deputy Registrar have the jurisdiction to consider whether or not she had the necessary jurisdiction to consider that issue of jurisdiction.

The case of **Mukisa Biscuits Manufacturing Company Ltd V West End Distributors Ltd [1969] EA** by Law JA is instructive. The Learned Judge of Appeal defined preliminary objection and explained as follows:

***“ so far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer dispute to arbitration.”***

Sir Charles Newbold, President of the court stated in the same judgment that :-

***“ A preliminary objection is in the nature of what used to be a demurrer. It arises a pure point of law which is argued on the assumption that all fact pleaded by the other side are correct . It cannot be raised if any fact has to be ascertained or of what is sought is the exercise of judicial discretion.”***

In raising the issue of whether the taxing master/ Deputy Registrar has the jurisdiction to tax a party and party bill of costs in a matter which was not before the High Court but before the magistrate's court in Machakos, in my view, the respondents herein were not seeking to invoke the judicial discretion of the court. The preliminary objection or jurisdiction of the Deputy Registrar /taxing officer sought to determine the issue of whether there was a cause of action in limine. In my view, that was a well taken preliminary objection because if it succeeded, the court seized of the matter would be saved the costs of a lengthy trial and attendant expenses on either side.

The locus classicus on jurisdiction is the celebrated case of **Owners of Motor Vessel “Lilian S” V Caltex Oil (Kenya) Ltd [1989] KLR 1** where the Court of Appeal ( per Nyarangi JA .....held as follows:-

***“ I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”***

The authority for the above holding by the learned judge of Appeal is found in the writing of John Beecroft Saunders in a treatise which is no longer published headed. Words and phrases legally defined- Volume 3: I-N at page 113 that :-

***“ By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the stature, charter, or commission under which the court is constituted , and may be extended or restricted by the like means. If no restricted or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics . If the jurisdiction of an inferior court or tribunal (including an arbitration ) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction, but, except where the court or tribunal has been given power to determine conclusively whether the facts exist where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”***

From the above decision and principle as espoused, it follows that if a court lacks jurisdiction, the matter will be at an end and that court must down its tools and make no further step.

In this case, the applicants advocate obtained a judgment for his costs against the respondents who were his clients. That judgment was obtained before a Milimani subordinate /magistrate's court CMCC 12625 of 2006. The court awarded him kshs 69,975.75 together with costs of that suit and interest.

The applicant herein(Decree holder) then filed his party to party bill of costs in this cause and in the said bill, he included as item No. 1, the costs awarded to him in the Milimani CMCC 12625 of 2006. He then fixed a date for taxation before the taxing officer. However, the respondents opposed the bill on the grounds first that the same was an abuse of the court process since the suit

for which the party and party costs are derived was determined in the magistrate's court and therefore the proper forum was that same court. The respondents also on a without prejudice basis challenged each of the items in the bill but nonetheless urged the taxing officer to dismiss the party to party bill of costs.

The applicant maintained that the taxing officer had jurisdiction to tax the bills as there was no jurisdiction for the lower court to tax party and party bill of costs; and that therefore the Deputy Registrar abused her jurisdiction in refusing to tax the bill. I will therefore determine the question of whether the party and party bill of costs herein was properly before this court.

The legal position is that costs in the subordinate court matters are assessed (not taxed) under schedule V11 of the Advocates Remuneration Order which is specifically titled: **“ costs of proceedings in Subordinate courts.”**

The above position is further fortified by paragraph 51 of the Advocates Remuneration Order which provides:

***“Subject to paragraph 22, the scale of costs applicable to proceedings in subordinate courts( other than Kadhi's courts is that set out in Schedule V11.”***

The applicant herein was a party to the suit in the lower court which was compromised in his favour. That being the case, in the event that the subordinate court ordered that he be paid his costs of that suit, then he ought to have filed his party to party bill of costs in the subordinate court for assessment. The applicant party having obtained judgment for costs, could not be expected to seek to tax another advocate/client bill of costs as that would have been a duplication or relitigation of the claim. Neither did he elect to tax his bill of costs under Schedule V of the Advocates Remuneration Order as provided for under paragraph 22 (1) of the Advocates Remuneration Order and hence, the applicable schedule, assuming he was awarded costs, it as per schedule VII.

Paragraph 22(1) of the said order provides:

***“ In all cases in which any other schedule applies an advocate may, before or contemporaneously with rendering a bill of costs drawn as between advocate and client, signify to the client his election that, instead of charging under schedule V, but if no election is made, his remuneration shall be according to the scale applicable under the other schedule.”***

There is no evidence that the applicant decree holder applied for a certificate of costs in the lower court matter. Neither did he attach to his party and party bill of costs herein a decree for the costs of kshs 69,975.75 awarded to him in the lower court to demonstrate whether the court also awarded him costs and interest .

In other words, the applicant/advocate did not lay any basis before this court, for seeking to tax party and party bill of costs in a matter that was not before the High Court. The Deputy Registrar of the High Court exercises special jurisdiction of the court (High Court) in taxing bills of costs, both party to party as well as advocate/client bills of costs. It is only in the exercise of that special jurisdiction that any party satisfied with the process of taxation would then file a reference to the Judge in chambers challenging the taxation, as provided for under paragraph 11 of the Advocates Remuneration Order.

Paragraph 11 (2) of the Advocates Remuneration Order applies to remuneration of an advocate of the High Court by his client in contentious and non contentious matters, as well as the taxation of costs as between party and party in contentious matters in the High Court, subordinate court other than Muslim courts, tribunals appointed under Landlord and Tenant Act and in tribunals established under the Rent Restriction Act.

Paragraph 10 defines taxing officer who is to give reasons for taxation as :

***“ The taxing officer for the taxation of bills under this order shall be the Registrar of District or Deputy Registrar of the High Court or in the absence of a Registrar such other qualified officer as the Chief Justice may in writing appoint. “***

There are duly appointed Deputy Registrars for subordinate courts in the Judicial Service Act. There is no provision for challenging assessments made by magistrates courts to the judge and neither is there provision in the order for taxation of subordinate court costs by the Deputy Registrar/taxing officer of the High Court . In **Bernard Gichobi Njira V Kanini Njira Kathendu & Another [2015] e KLR** . The appellant filed a reference challenging the jurisdiction of subordinate court in Wanguru to tax bill of costs for lack of authority by the Chief Justice to tax the costs contending that paragraph 10 of the Advocates Remuneration order only allows Registrars, Deputy Registrars or taxing officer to tax bills of costs. Limo J. held that subordinate courts can award and assess costs payable. I agree and add that the Deputy Registrar of the High Court only exercised special jurisdiction in accordance with the powers given to him or her under the Civil Procedure Act and Rules made thereunder. The two roles of taxing officer and Deputy Registrar are separate and distinct and mutually exclusive and one jurisdiction cannot be substituted for the other.

In this case, albeit the applicant contends that the Deputy Registrar had no jurisdiction to consider whether she had jurisdiction to tax the bill of costs as presented, which bill related to party and party costs in a matter determined in the subordinate court, and that therefore she abused her jurisdiction for , she should simply have taxed the bill of costs, I beg to differ . I hold that first, she had the power to determine whether she had jurisdiction to tax the bill as presented before taxing or declining to tax the bill.

Under paragraph 13A of the Advocates and Remuneration Order, the taxing officer , for the purposes of any proceedings before him relating to taxation, has 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.

In my view, the determination on the question whether a party and party bill of costs arising from a matter before the subordinate court could be brought to the High Court for taxation by the taxing officer as opposed to being assessed in the same cause is and was squarely within her jurisdiction.

I however do not agree with the respondent’s submissions that since there was no taxation, the applicant could not file a reference. A party who invokes the jurisdiction of the taxing officer can only challenge that decision to the judge in chambers by way of a reference. Ringera J in **Machira and Company Advocates V Magugu [2002] 2 EA 248 at page 422** put it aptly inter alia:

***“.....secondly, as I understood the practice relating to taxation of bills of costs, any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs is ventilated by way of a reference to the judge in accordance with paragraph 11 of the Advocates Remuneration Order.”***

Similarly in **Donholm Rahisi Stores (firm) V EA Portland Cement Ltd [2005] e KLR** Waweru J held:

***“ taxation of costs whether those costs be between party and party or between advocate and client is a special jurisdiction reserved to the taxing officer by the Advocates Remuneration Order. The court will not be drawn into the arena of taxation except by way of reference (from a decision on taxation) made under Rule 11 of the Advocates Remuneration Order. The present application is not a reference. The application seeks an order that would have the effect of interfering with the special jurisdiction of the taxing***

***officer, a jurisdiction that the court cannot take upon itself.”***

I also find that the role of the taxing officer is not that of a rubber stamp thus, to merely tax any bill of costs brought before her. She has the duty to examine whether or not she has the necessary jurisdiction to tax the bill and therefore she cannot be faulted for finding that she lacked such jurisdiction.

I however, agree with the applicant that having found that she lacked such jurisdiction, she could only have struck out the bill of costs and not grant any leave .

Still on that issue of taxation of party and party bill of costs arising from a matter determined in the lower court, I find the decision by Kasango J in **Angelo Gitonga V Angelo Gitonga & Another [2010] e KLR** useful that:

***“.....there is no provision on the Advocates Remuneration Order for taxation of subordinate courts costs. A practice is however arising, where parties in the subordinate court file laborious and detailed bills of costs, and then engage the magistrate in taxation. That in my view is uncalled for and should be discouraged subordinate court’s party and party costs should be assessed following the provisions of Schedule VII of the order....”***

In this case, there is no evidence that the applicant applied for certificate of costs which is normally granted in the subordinate court as opposed to the certificate of taxation normally given in the High Court by the taxing officer.

The proper procedure for the applicant herein would have been to file his party and party bill of costs before the subordinate court and in the same cause and if he was dissatisfied with the assessment in the subordinate court, he would still seek this court’s intervention in challenging that assessment as was held in the **Angelo Gitonga V Angelo Gitonga and Another (supra)**, and in the event that the assessment would have failed to take into account the provisions of Schedule VII of the Advocate’s Remuneration Order.

In **Bernard Gichobi Njira V Kanini Njira Kathendu & Another [2015] e KLR** Limo J in a reference No. 4/2015 at Kerugoya High Court where the applicant had raised a preliminary objection in a subordinate court at Wanguru Court on the basis that a Resident Magistrate had no jurisdiction to tax the respondent’s bill of costs presented before that court by the respondents who had been awarded costs by the same court, the applicant was overruled by the subordinate court and he filed a reference in the High Court challenging that decision and contending that the Resident Magistrate in the absence of the express conferment of the jurisdiction to tax or assess the bill of costs, had no jurisdiction to tax/assess the same urging the court (judge) to set aside that taxation/assessment and strike out the bill by the respondent. The Learned Judge correctly found that subordinate courts had jurisdiction to determine costs payable in cases filed before them and that they also had jurisdiction to assess/tax costs.

I would further agree with the learned judge in the above cause that Section 27 of the Civil Procedure Act gives both the subordinate and High Court discretion and jurisdiction to not only award costs but to determine the extent to which those costs are to be paid and by which party.

Further that paragraph 49 of the Advocates Remuneration Order clearly defines a court to mean both the High Court or any judge thereof or a Resident magistrate’s court or a magistrate sitting in a magistrate’s court. A court in part III of the Advocates Remuneration Order is mandated to determine costs in contentious matter as between advocate and client and between party and party. It is therefore clear that a magistrate’s court has jurisdiction to assess costs.

Furthermore, paragraph 51 of the said Advocates Remuneration Order r clearly gives the applicable scale to be used in the subordinate courts as Schedule VIII.

I must also state that the respondent's contention that the subordinate court party to party costs can only be assessed by the Executive Officer of that court is not pegged on any law and is in that regard a misconception. There is no power given to the Executive Officer as a taxing officer of that court to assess or tax costs between party to party.

The successful parties before a subordinate court are not expected to draw an elaborate itemized bill of costs. They are expected to write a letter to that court seeking for an assessment of costs as proposed or as drawn, upon which the sitting magistrate or Deputy Registrar of the subordinate court may assess/approve the costs as drawn or invite both parties to the bill to submit on the bill before a certificate of costs is given. Any party aggrieved by the decision thereof may file a reference before a judge in chambers under paragraph 11 of the Advocates Remuneration Order. It is therefore a misconception to advance an argument that all costs whether party or party or advocate/client can only be taxed or assessed by the taxing officer in the High Court .

The upshot of all the above is that I find no merit in the reference herein. I uphold the Deputy Registrar /taxing officer's finding that she had no jurisdiction to tax a bill of costs in a matter determined by the subordinate court. Accordingly, I dismiss the reference dated 8<sup>th</sup> April 2015 for reasons that the applicant should have and is still at liberty to file his bill of costs before subordinate court for assessment.

I order each party to bear their own costs of this reference.

Dated, signed and delivered in open court at Nairobi this 21st day of October 2015.

**R.E. ABURILI**

**JUDGE**