



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
MISC. CIVIL APPLICATION NO.78 OF 2008

RATEMO OIRA & COMPANY ADVOCATESAPPLICANT

VERSUS

KENYA STEEL FABRICATORS LIMITEDRESPONDENT

R U L I N G

1. The matter before me turns on whether a Deputy Registrar who is seized of a taxation of an Advocate-Client Bill of costs has jurisdiction to entertain and determine a preliminary challenge as to whether costs are due.
2. This question presents itself in the Applicants Notice of Motion dated 20th May 2013 whose main prayers are:-
 1.
 2.
 3. **THAT** this Honourable court be pleased to set aside ex-parte orders granted by the Court on the 5th March, 2009 and all consequential orders pending the Hearing and Determination of this Application.
 4. **THAT** this Honourable court be pleased to grant leave to the Applicant to defend the Respondent's Notice of Motion dated 17th December, 2008 and the Respondent's Bill of Costs dated 4th August, 2009.
3. The Firm of Ratemo Oira & co. Advocates (**The Applicant**) was retained by the Respondent to Act on its behalf in Busia SRMCC No.215 of 2001 **Selina A. Masanga –vs- Kenya Steel Fabricators Ltd.** Perhaps not too uncommon a dispute arose in respect to the Advocates fees and through this cause, the Applicant filed an Advocate/Client Bill of Costs.
4. That Bill of Costs immediately ran into headwinds and in a Motion dated 17th December 2008 the Respondent sought that it be struck out with costs. The premise of the Application was that the fees of ksh.55,000/= agreed between the Applicant and the Respondent had been fully paid. In addition, that there was no demand for fees from the Advocate preceding the filing of the Bill of Costs. Lastly, that no 30 days notice was issued by the Advocate to the client prior to the filing of the Bill of Costs.
5. The Respondents Motion was heard on 22nd January 2009 in the absence of the Applicant who was said to have been duly served. In a ruling delivered on 19th March 2009, the Deputy Registrar agreed with the Respondent and struck out the Bill with Costs to the Respondent.

6. Following through, the Respondent filed its own Bill of Costs dated 4/08/2009 against the Applicant on 10th August 2009. Again, in the absence of the Applicant, the Respondents bill was taxed on 30th May 2012 at ksh.144,890/=. Execution of those costs have been stayed pending the hearing and disposal of the matter now before Court.
7. The thrust of the Applicants argument is that the Respondents Notice of Motion dated 17th December 2008 was irregularly placed before the Deputy Registrar as the Deputy Registrar had no jurisdiction to hear and determine it. It being argued that the Deputy Registrar's main duty delegated by the High Court is to tax the Bill of Costs as stipulated by the Advocates Remuneration Order. This Court was asked to find support for this proposition in the decision Nakuru H.C.in Misc. Civil Application No.241 of 2008 **Ratemo Oira & Co. Advocates –vs- Eldoret Express Co. Ltd** (unreported) and Nrb Misc Application No.444/2004 **Kalonzo Musyoka & Paul M. Wambua –vs- Rustam Iira** [2006] eKLR.
8. The Respondent, in reply, spent considerable time arguing the merits of its Notice of Motion of 17th December 2008. It did not address the question of jurisdiction raised by the Applicant. Remotely, however, in answer argued that the Advocate has made no effort to reinstate the Bill five (5) years after it had been struck out nor challenged the Deputy Registrar's decision by way of Reference to the Judge (Paragraph 11 of The Advocates (Remuneration) Order).
9. What this Court is being told by the Applicant is that the duty and scope of the Deputy Registrar in a taxation is simply to tax the Bill of Costs before him/her and no more. That once an objection is taken to the procedure and manner in which the Deputy Registrar is moved then it must surrender the hearing of that objection to the High Court. Seeking to buttress this argument, the Applicant referred me to the decision of Ouko J (as he then was) in **Ratemo Oira & n** (supra). But I must say with respect to the Applicant, that to rely on that decision is to miss the point. In that decision the Court considered the question whether the High Court can entertain an application under Section 51(2) of The Advocates Act which provides:

“51(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

The Judge held, and in my view, correctly that the word “Court” in that section referred to as the High Court and therefore an application Under Section 51 (2) of The Advocates Act can only be heard by the High Court.

10. The provisions of Section 51 is on the role of The Court once a bill has been taxed and a Certificate issued by the Taxing Officer. Unless set aside or altered by the High Court it is final as to the amount of costs covered by the Certificate. And the High Court may make such order in relation thereto as it thinks fit including, where there is no dispute as to retainer, enter judgment for the certified sum. The provisions of Section 51 are in respect to post-certificate events and not like here where an objection was taken up prior to and indeed to the taxation of the Bill.
11. The situation obtaining was that the Notice of Motion dated 17th December 2008 challenged the Bill of Costs filed by the Applicant. The challenge was threefold. The first was that the agreed fees had been fully settled. Secondly that there was no demand for fees from the Advocate preceding the filing of the bill and lastly that no 30 days Notice was issued by the Advocate to the client prior to the filing of the Bill of Costs. The challenge was akin to the taking of a Preliminary Objection to the Bill.
12. In the decision of 19th March 2009 the Deputy Registrar struck out the Bill and found that the client has demonstrated that it had fully settled the agreed fees. What the Deputy Registrar was saying was that no fees was due to the Advocate at all as it had been settled in full and the Bill was unnecessary. I am unable to locate any provision of statute or in Advocates Remuneration Order which bars the Deputy Registrar from dealing with such an objection before taxing of a Bill. Lest there should be some confusion, this Court is aware that a client may, under the provisions of Section 45 (2) of the Advocates Act, seek the setting aside or variation of an Agreement with

respect to fees by applying by chamber summons to Court. The summons shall be heard by a Judge sitting with two assessors. But not so like here where the Advocate has filed a Bill against his client and an objection is taken up by client on the basis that the bill has been paid in full.

13. I hold that the issue as to whether the fees has been paid in full, just like the procedural questions of notice taken up in the motion, were matters that fell squarely within the purvey of the Taxing Master's function in taxation. I feel somewhat fortified because the language of paragraph 12 of The Advocates Remuneration Order contemplates that some disputes may arise in the cause of the Taxation of a Bill. The paragraph provides:

“12.(1) With the consent of both parties, the taxing officer may refer any matter in dispute arising out of the taxation of a bill for the opinion of the High Court.

(2) The procedure for such reference shall following that of a case stated but shall be to a judge in chambers.”

The language does not command the Taxing Officer to refer any or all disputes arising out of the taxation to the High Court. The Deputy Registrar in my view may choose to deal with certain disputes. The Deputy Registrar, this Court thinks, acted appropriately.

14. For reasons rendered I do hereby dismiss the Notice of Motion dated 20th May 2013 with costs.

F. TUIYOTT

J U D G E

DATED, SIGNED AND DELIVERED AT BUSIA THIS 18TH DAY OF FEBRUARY 2014.

IN THE PRESENCE OF:

KADENYICOURT CLERK

.....FOR APPLICANT

.....FOR RESPONDENT