



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gikeria & Vadgama Advocates v Okali (Miscellaneous Application  
166 of 2019) [2022] KEELC 2301 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2301 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**MISCELLANEOUS APPLICATION 166 OF 2019**

**OA ANGOTE, J**

**MAY 12, 2022**

**IN THE MATTER OF TAXATION OF ADVOCATE/CLIENT BILL OF COSTS**

**BETWEEN**

**GIKERIA & VADGAMA ADVOCATES ..... RESPONDENT**

**AND**

**AGWU UKIWE OKALI ..... CLIENT**

**RULING**

**Background**

1. Vide Chamber Summons dated June 22, 2021, brought pursuant to Sections 1A, 1B, 3A of the *Civil Procedure Act* and Rule 11(1) of the *Advocates Remuneration Order*, the Client/Applicant is seeking for the following reliefs:
  - a) The Deputy Registrars decision dated the June 10, 2021, taxing the Advocates Bill of Costs dated September 23, 2019 be set aside in its entirety.
  - b) The Clients Application dated March 6, 2020, be heard before the judge for determination before the Advocate can lodge his Bill of Costs.
  - c) Costs of this Application be provided for.
2. The Application is premised on the grounds on the face of the Motion and supported by the Affidavit of the Client's advocate who deponed that the Advocate/Respondent herein filed a Bill of Costs dated September 23, 2019, against the Client/Applicant; that in response, the Client/Applicant filed an application dated April 29, 2020 seeking to have the said Bill of Costs struck out on the basis, inter alia, that the Advocate had lost his right to tax the bill and that the Deputy Registrar summarily dismissed the application without delving into its merits or otherwise.



3. The Client's/Applicant's counsel deponed that the bill was taxed on June 10, 2021, at Kshs 965,281.51 which amount is manifestly high and unjust in the circumstances; that the Client is aggrieved by the said Ruling and has filed this reference and that the Advocate's/Respondent's Bill of Costs was premature as the Applicant had filed an application contesting jurisdiction.
4. Counsel for the Client/Applicant deponed that the Bill of Costs was taxed before determination of the application dated the 6<sup>th</sup> March, 2020 and that the interests of justice dictate that the orders sought are granted.
5. In response, the Advocate/Respondent's counsel deponed that the Respondent filed an Advocate-Client Bill of Costs dated September 23, 2019; that in response, the Applicant filed an application dated March 6, 2020, alleging that the Respondents' right to file the Bill of Costs had not accrued and seeking that it be struck out and that in response to the application, the Respondent filed Grounds of Opposition dated February 18, 2021.
6. It was deponed by the Respondent's counsel that the Deputy Registrar directed the parties to file submissions on both the application and the Respondent's Bill of Costs; that vide a Ruling of 10<sup>th</sup> June, 2021, the Deputy Registrar dismissed the Applicants' application and taxed the Respondents bill at Kshs 965,281.51.
7. It was deponed that contrary to the Deponent's assertions, the application of March 6, 2020 did not contest the jurisdiction of the Deputy Registrar but only sought to have the Bill of Costs struck out; that the proper recourse for the applicant is to file an Appeal and not a reference; that the application ought to be struck out for failure to comply with Rule 11(1) of the Advocates Remuneration Act by failing to indicate with particularity the items contested in the Bill of Costs and that there is no justification for interfering with the decision of the Deputy Registrar.

### Submissions

8. The Applicant/Client, through her counsel, submitted that the application dated March 6, 2020 by the Applicant seeking to have the Advocates Bill of Costs struck out on the basis that inter alia the Advocate did not render services for which he was retained ought to have been heard and determined by the Judge before taxation of the Bill of Costs.
9. It was submitted on behalf of the Client/Applicant that the Deputy Registrar summarily dismissed the application and proceeded to tax the Advocates Bill of Costs and that in so doing, the Deputy Registrar acted in excess of her jurisdiction. Reliance in this regard was placed on the cases of *Abincha & company Advocates v Trident Insurance Company Ltd* [2013] eKLR, *Hezekiel Oira t/a H. Oira Advocate v Kenya Broadcasting Corporation* [2015] eKLR, and *Mugambi & Company Advocates v John Okal Ogwayo & another* [2013] eKLR.
10. In the above cases, it was submitted, the courts held that the taxing officer did not have jurisdiction to hear and determine the client's Chamber Summons to strike out the Advocates Bill of Costs because the issue being canvassed in the application was whether or not the advocate was entitled to costs in the first place from the clients.
11. According to counsel, the award of Kshs. 965, 281.51 is manifestly high and unjust in the circumstances as the instructions were simply to obtain an injunction restraining the 1<sup>st</sup> and 4<sup>th</sup> Defendants in the suit from constructing along the boundary fence of the suit property and that as the value of the subject matter of the suit could not be ascertained from the pleadings, the bill was chargeable under Schedule 6(1) of the Advocates (Remuneration) Order 2009.



12. Counsel for the Client/Applicant submitted that Schedule 6 (1) of the Advocates (Remuneration) Order 2009 provides the minimum instruction fees of Kshs 6,300 and that no justification and/or reasons were given for the unreasonable increase in basic instruction fees. Reliance was placed on the case of *Arif Bayusuf v Lucy Tofani* [2017] eKLR where the Court awarded Kshs. 100,000 as instruction fees in a matter for filing an application for injunction.
13. It was submitted that no complexity, difficulty or novelty was demonstrated by the Advocate herein to warrant the amount awarded by the Deputy Registrar.
14. The Advocate/Respondent submitted that the Advocate/Client relationship between the Advocate and the Client is undisputed and that the Advocate diligently performed his duties and rendered the services as particularized in the Bill of Costs dated 23<sup>rd</sup> September, 2019 from 2011 until 2019 when the Client engaged Messrs. Virginia Shaw & Company Advocates.
15. Counsel submitted that the Advocates Remuneration Order gives the Deputy Registrar jurisdiction to tax the Bill of Costs where there is no dispute as to retainer and that the dispute in the case of *Mugambi & Company Advocates v John Okal Ogwayo & another* [2013] eKLR involved whether or not an Advocate Client relationship existed.
16. It was submitted that it is a principle of law that an Advocate who has been instructed to act for a Client has a legitimate expectation to be paid fees for services rendered regardless of whether the Advocate/Client relationship is terminated before conclusion of the suit. Reliance in this regard was placed on the cases of *Christine James Kioko v J. A Makau & Co & Advocates* [2021] eKLR and *Macharia & Co. Advocates v Arthur K. Magugu* [2012] eKLR.
17. As to whether the Bill of Costs was properly taxed, it was submitted that the Applicant has not demonstrated how the items were improperly taxed and that the court in *Alfred Ochieng Opiyo t/ a Ochieng Opiyo & Co. Advocates v Export Hydro Pump & Services (Africa) Limited* [2018] eKLR affirmed that where it is alleged that the taxed costs are exaggerated, the client was obligated to support that allegation.
18. Counsel for the Advocate/Respondent submitted that it is a principle of law that the High Court will only interfere with the decision of a Taxing Master in cases where there has been shown to be an error in principle as expressed by the court in *Republic v Ministry of Agriculture & 20 others Ex-Parte Muchiri W' Njuguna* [2006] eKLR.
19. It was submitted that the Client herein has failed to demonstrate such error in principle and therefore the Deputy Registrar's decision on the Advocates Bill of Cost should be upheld and that the application is an abuse of the court process and should be dismissed with costs.

### **Analysis and Determination**

20. Having considered the application, affidavits and submissions herein, the only issue that arises for determination is;  
Whether the Deputy Registrars decision dated the 10<sup>th</sup> June, 2021 should be set aside in its entirety?
21. The Applicant herein seeks to have the Taxing Master's decision dated 10<sup>th</sup> June, 2021 set aside. The impugned Ruling, other than taxing the Advocates Bill of costs dated September 23, 2019, determined the Client's application dated March 6, 2020.
22. According to the Applicant/Client, its application dated March 6, 2020, seeking to have the Advocates Bill of Costs struck ought to have been heard and determined by the Judge before taxation of the Bill of



- Costs. It was submitted that the Deputy Registrar summarily dismissed the application and proceeded to tax the bill and in so doing, acted in excess of her jurisdiction.
23. In response, the Respondent averred that the Deputy Registrar was duly vested with jurisdiction to determine the application because the existence of the Advocate Client relationship was not disputed and that in any event, the only recourse available to the Client with respect to the Ruling was an Appeal and not the present reference.
  24. Before discussing the Deputy Registrar’s jurisdiction in respect to the application dated March 6, 2020 which she dismissed, the court will first deal with the objection raised by the Respondent whose import is that the proper way to challenge the Deputy Registrar’s Ruling on the application dated 6<sup>th</sup> March, 2020 is by way of an Appeal. This objection essentially challenges this court’s jurisdiction, while sitting on a Reference, to deal with the portion of the Ruling of 10<sup>th</sup> June, 2021 which dealt with the application of March 6, 2020.
  25. The Advocates Remuneration Order does not provide for an “Appeal” against the decision of a taxing officer. The only procedure provided for in challenging the decision of a Taxing Officer in which she has taxed a Bill of Costs is by way of a Reference pursuant to paragraph 11 of the Advocates Remuneration Order.
  26. In the case of *Edward Mwangi Macharia vs Maina & Maina Advocates* [2017] eKLR, the court held that an Appeal being in respect of a decision made by the Deputy Registrar as a Taxing Officer could only have been instituted by way of Reference. Considering that the Ruling of the Deputy Registrar dealt with both the application and the Bill of Costs, this court sitting on a Reference is well vested with jurisdiction to determine the merit of the Ruling on the application of 6<sup>th</sup> March, 2020 as well as the Bill of Costs.
  27. I say so because if I find that the Deputy Registrar did not have the requisite jurisdiction to determine the application dated 6<sup>th</sup> March, 2020, then I will set aside the Ruling in its entirety, including the portion dealing with the taxed Bill. However, if I find that the Deputy Registrar had the jurisdiction in dealing with the application, I will proceed to consider if the taxed Bill was done in accordance with the laid down principles.
  28. The powers of the Deputy Registrar as a Taxing Officer is provided for under Paragraph 13 A of the Advocates Remuneration Order as follows:

“For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper 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.”
  29. It is trite that the Deputy Registrar’s jurisdiction is not merely mechanical and limited to taxing of bills brought before her. According to the above provision of the law, it must of necessity include matters incidental to the taxing of the Bill of Costs. The court is in this respect fortified by the decision of the Court of Appeal in *C.B. Gor & Gor v Oriental Commercial Bank Limited (formerly known as Delphis Bank Limited)* [2018] eKLR wherein the learned Judges held as follows:

“To us, the contention that the taxing master’s jurisdiction is limited to only taxing bills of costs hence he/she could not handle an application challenging the competency of the bills in question does not hold water. More so, paying regard to paragraph 13A of the Advocates(Remuneration) Order which stipulates:



“For the purpose of any proceeding before him, the taxing officer shall have power and authority to summon and examine witnesses, to administer oaths, to direct the production of books, paper 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.” [Emphasis added]

The above provision surely must mean that a taxing master who is charged with the duty of taxing bills of costs must also have the power to determine an objection as to the competency of the bill.”

30. The above decision of the Court of Appeal notwithstanding, the Advocates Remuneration Order provides in certain instances where an application must be heard by the Judge before the Bill of Costs can be taxed.
31. The application dated March 6, 2020 was filed pursuant to the provisions of clause 61 of the Advocates Remuneration Order. In the application, the applicant sought to have the Advocates Bill of Costs dated 23<sup>rd</sup> September, 2019 struck out on the grounds, inter alia, that the Advocate did not have any right to lodge the Bill of Costs in view of his conduct during the proceedings; that the Advocate did not render services for which he was retained and that the monies already paid to the Advocate were sufficient.
32. The Deputy Registrar dismissed the application in its entirety on the basis that the same constituted an abuse of the court process. The Applicant’s position is that the said application should have been referred to the Judge for hearing.
33. Clause 61 of the Advocates (Remuneration) Order, 2009 under which the application was filed provides as follows:
  - “ 61. Costs improperly incurred by advocate.
    - (1) If in any case it appears to the Court that costs have been incurred improperly or without reasonable cause, or that by reason of any undue delay in proceedings under any judgement or order, of any misconduct or default of the advocate, any costs properly incurred have proved fruitless to the party on whose behalf the same were incurred, the Court may call on the advocate by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the advocate and his client, and also (if the circumstances of the case shall require) why the advocate should not repay to his client any costs which his client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require.
    - (2) The Court may in any case refer the matter to a taxing officer for inquiry and report and direct the advocate in the place to show cause before such taxing officer.”
34. Considering that the Plaintiff’s complaint was that the advocate was not entitled to any costs due to his conduct, and the application having been filed pursuant to clause 61 of the Advocates (Remuneration) Order, 2009, the Taxing Officer should have referred the application to this court for hearing and/or directions before proceeding with taxing the Bill of Costs.



35. To the extent that the Taxing Officer dealt with the application summarily and dismissed it, it is the finding of this court that she did not have the requisite jurisdiction to do so. Indeed, the Taxing Officer could only deal with the Bill of Costs after the application dated March 6, 2020 had been heard and determined by this court, and directions given.
36. For those reasons, the court makes the following orders:
- a) The Ruling of the Taxing Officer dated June 10, 2020 is hereby set aside in its entirety.
  - b) The application dated March 6, 2020 to be heard by this court.
  - c) Each party will bear his/its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2022**

**A. ANGOTE**

**JUDGE**

**In the presence of;**

Mr. Ouma for the Advocate/Respondent

Ms. Munyiri for Ms. Shaw for the Client/Applicant

Court Assistant – John Okumu

