



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Application 403 of 2008

M/S CYRIL WAYONGO ADVOCATE T/A WAYONGO & CO. ADVOCATE....APPLICANT

VERSUS

AGRICULTURAL FINANCE CORPORATION.....RESPONDENT

RULING

The Respondent M/s Agricultural Finance Corporation filed Chamber Summons dated 10th November, 2008 on 12th November, 2008. The application is supported by the affidavit of one Rose Ochanda. The Respondent/Applicant's Corporation Secretary.

The prayers sought are:

- 1. THAT this Honourable Court does stay taxation of the bill of costs filed herein pending the hearing and determination of this application.**
- 2. THAT this Honourable Court be pleased to dismiss the bill of costs herein filed in court on 28th October, 2008 by the Applicant.**
- 3. THAT the costs of this Application be awarded to the Respondent.**

I have read the pleadings filed and the responses thereto. The question I have asked myself and which was not answered by any of the parties is whether I have jurisdiction to deal with this matter which touches on taxation of a bill of costs by an advocate. The bill has not been taxed.

Taxation of a bill of costs is a special jurisdiction enjoyed by a taxing master pursuant to Rule II of the Advocates Remuneration Order. Jurisdiction to this court is conferred through the filing of a reference. There is none before me.

In Fulchand M Shah v. Panachand J. Shah & 6 others (2010) eKLR my sister Lady Justice M. K.Koome (now J.A) heard;

“...I also add that the courts in Kenya are hierarchical; the jurisdiction of determining the costs is vested upon the taxing master. If there are any issues arising from taxation they can only be brought to the High Court by way of a reference. This court has no jurisdiction therefore to stay proceedings before the taxing master”.

In Sharma v. Uhuru Highway Development Ltd (2001) 2 E.A 530, the court of Appeal heard;

“.....O’Kubasu J. not being seized of the taxation itself, and there being no appeal or reference to him as provided for by paragraphs 11(1) and 2 and 12 if the Order, from a decision of the Taxing Officer who was dealing with the taxation, and the taxation not being a suit filed in the High Court for the recovery of costs, simply had no jurisdiction at all, to hear as he did the Respondent’s application to strike out the cause. This by itself makes the hearing of, and his ruling of 19th May, 2000, on the Respondent’s application a nullity from the word go. It would have been different if the Appellant had brought a suit in the High Court by way of a Plaint, for the recovery of costs due to him, under section 48 of the Advocates Act hereinafter referred to as ‘the act’. This not having been the case, O’kubasu J. lacked jurisdiction to entertain the Respondent’s application and which lack in my view, vitiates the whole of the proceedings before the learned judge”

In view of the above decisions, I hold that I have no jurisdiction to entertain this application and as a result, the same is dismissed with costs.

Order accordingly.

Dated and delivered at Nairobi on this 23RD day of august 2012.

M. K. Ibrahim
Judge

DATED AND Delivered at Eldoret on this 31st day of october 2012.

F. Azangalala

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Judge

In the presence of: Mr. Keter h/b for Mr. Wayonga for Applicant

Mr. Muhoro h/b for Mr. Kinyanjui for Respondent