



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT MILIMANI COMMERCIAL COURTS, NAIROBI**  
**HCCC NO. 829 OF 2003**

**LILA VADGAMA.....PLAINTIFF**

**-V E R S U S**

**DEPOSIT PROTECTION FUND BOARD.....DEFENDANT**

**R U L I N G**

The application before the court touches upon and concerns taxation. It was filed on 23rd September, 2003. In order to appreciate its import in full, I propose to set out all its recitals in their entirety. It reads-

**“MISCELLANEOUS CIVIL CAUSE NUMBER 829 OF 2003**

**IN THE MATTER OF: THE ADVOCATES REMUNERATION ORDER**

**AND**

**IN THE MATTER OF: TAXATION OF THE BILL OF COSTS BETWEEN**

**LILA VADGAMA.....ADVOCATE/APPLICANT**

**AND**

**DEPOSIT PROTECTION FUND BOARD \_\_\_\_\_ ]**

**Liquidator of PRUDENTIAL BANK LIMITED ]...CLIENT/RESPONDENT**

**(In liquidation) ]**

**CHAMBER SUMMONS**

**Rules 13/14 of the Advocates Remuneration Order, Advocates Act, Cap 16, Section 44; And all Applicable Rules.**

**LET ALL PARTIES concerned attend upon the Deputy Registrar in Chambers at the Milimani Commercial Courts on 28th the October day of 2003 (sic) at 9.00am or as soon thereafter as can be, for the taxation of the Advocate/applicant’s Bills of Costs upon the application of the above Advocate, which Bills of Costs are contained in an annexure hereto marked as LV I.**

**Dated at Nairobi this 16th day of September, 2003.**

**Sgd.**

**Lila Vadgama**

**Advocate/Applicant**

**Drawn & Filed by... To be served upon..."**

To this application, the respondents advocates filed a notice of preliminary objection dated 27th October. It reads simply-

**“TAKE NOTICE that the client/respondent shall raise preliminary objections to the hearing of this cause. In particular, the respondent shall object to the taxation of the entire Bill of Costs, as the same is bad in law, incompetent, fatally defective, irregular and unprocedural.”**

It was this preliminary objection which was canvassed before me on 5th May, 2005 by Ms. Kigen for the client/respondent, who became the applicant in the objection, and Mr. Lila Vadgama, the advocate/applicant who became the respondent in the objection.

In her submission, Ms. Kigen raised three main points. Firstly, she stated that the client/respondent in the matter was in liquidation and therefore Mr. Vadgama needed to obtain leave under S.228 of the Companies Act before commencing these proceedings. Secondly, she submitted that the application was brought under a wrong procedure as it was headed “chamber summons” instead of “miscellaneous application”. Thirdly, she submitted that the bills were not itemised, and there were no disbursements as required by Rule 69. The bills were therefore defective and unprocedural and should be struck out.

Opposing the preliminary objection, Mr. Vadgama submitted that the application which he filed was neither an action nor a proceeding as envisaged in s.228 of the Companies Act, and therefore he did not require leave of the court to do so. He further submitted that whether the bills are properly drawn or not are matters which ought to be raised at the taxation, but not before this court. In a short reply, Ms. Kigen emphasized that they are only opposing the form in which the bill is brought as the format used is wrong.

After considering the argument of both counsel, I am of the view that the issue of jurisdiction is very central to the success or failure of this objection. If the court has jurisdiction to entertain it, then all is well; but if it has no jurisdiction, then it cannot take one step but must down its tools. The matter which is the subject of this objection is expressed to be brought under Rules 13 and 14 of the Advocates Remuneration Order. Rule 13 provides for the taxation of costs between advocate and client on application of either party, and subrule (3) thereof requires that the bill of costs be filed in a miscellaneous cause. Any party who objects to the decision of the taxing officer is at liberty to apply to a judge under Rule 11 thereof. Until that stage is reached, it seems to me that the person properly seized of jurisdiction to attend to all matters related to the taxation is the taxing officer himself or herself, and that until after that officer has discharged his or her duties under the rules, it would be premature to involve this court.

I am fortified in this view by the decision of the Court of Appeal in **SHARMA v.UHURU HIGHWAY DEVELOPMENT LTD.** Civil Appeal No.133 of 2000. In that case, the appellant submitted his itemized bill of costs to the taxing officer for taxation as between him and his client. After service of the notice of taxation and the itemized bill of costs, the respondents sought to have the miscellaneous cause struck out for failure to comply with s.48 of the Advocates Act, which required the appellant to commence his proceedings in this regard by way of a plaint. The application was heard in the High Court and the miscellaneous cause was struck out. On appeal, one of the issues that the Court of Appeal addressed was whether the High Court has jurisdiction to entertain the application, or whether such jurisdiction was vested in the Taxing Officer. Holding that the application to strike out should have been heard by the taxing officer and not by a judge, Akiwumi, J.A. said-

**“...an application by the respondent to strike out the appellant’s Misc. Case No.81 of 1999, which I shall hereinafter refer to as “the cause”, was fixed for hearing not before the Taxing Officer as**

should have been the case, since the taxation was pending before him, but before (name of the judge, hereinafter referred to as “the judge”) as he then was... The judge 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 of 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 his 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 S.48 of the Advocates Act hereinafter referred to as “the Act”. This not having been the case, the judge lacked jurisdiction to entertain the Respondent’s application and which lack in my view, vitiates the whole of the proceedings before the learned judge. Although this was not raised before the judge, it is a fundamental matter which this court can consider suo moto , and I will on this ground alone, allow the appeal...”

Similarly in this matter, the advocate/applicant filed miscellaneous Civil Cause No.829 of 2003 for taxation of an advocate/client bill of costs. Within that cause, he invoked the provisions of rules 13 and 14 of the Advocates Remuneration Order by way of a chamber summons to which he annexed the bills of costs. Such matters are clearly within the domain of the Taxing Officer, and it is before him or her that objections should be taken in the process of taxation. He or she alone is seized of the taxation itself, and this court lacks jurisdiction to entertain the respondent’s preliminary objection. The decision of the Court of Appeal binds me not to hold otherwise.

For these reasons, the preliminary objection is dismissed with costs to the advocate/applicant.

Dated and delivered at Nairobi this 2nd day of June 2005

**L. NJAGI**

**JUDGE**