



**Onsongo & Co Advocates v Kariuki (Miscellaneous Civil Application
E157 of 2023) [2024] KEHC 6004 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6004 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E157 OF 2023**

RE ABURILI, J

MAY 23, 2024

BETWEEN

ONSONGO & CO ADVOCATES APPLICANT

AND

ALICE WANJIKU KARIUKI RESPONDENT

*(Arising from the professional services rendered by the Applicant
for the Respondent in the original Kisumu MCELC No. 11 of 2020)*

RULING

1. The application dated 20th February 2024 filed by the Advocate/Applicant against the Client/Respondent seeks orders for entry of Judgment in favour of the Advocate against the Client in the sum of Kshs.293,807 as per the Certificate of Costs dated 5th February 2024 and issued on 19th February 2024 by the Deputy Registrar of this court.
2. The Applicant also prays that interest at 14% p.a from 11th January 2012 date of instructions until payment in full be awarded together with costs of the application.
3. The application was served upon the Respondent and an affidavit of service filed into court but the Respondent never filed any response and neither did she appear in court for the hearing.
4. There is also no evidence of any Reference having been filed to challenge the Certificate of Costs dated 5th February 2024. There is neither a challenge to retainer.
5. However, as the legal/professional services for which the advocate sought his costs to be settled were rendered before the Chief Magistrate's Court at Kisumu in the Environment and Land Court Case No. E011 of 2020, the proper court with jurisdiction to receive and tax the advocate/client bill of costs was the Environment and Land Court, a Superior court which has equal status with the High Court.



6. Issues of jurisdiction of courts cannot be compromised by the court even if there is no objection to the jurisdiction. It is upon the court seized of the matter to investigate and establish whether it has jurisdiction to entertain a dispute.
7. I say so because the proceedings of a court exercising ELC jurisdiction in the lower court have a chain of command in the hierarchy of courts and they end up before Environment and Land Court.
8. For the Deputy Registrar of this court to tax a bill in a matter involving parties engaged in an ELC related matter, she has to call for the file from ELC Magistrate's court which is eventually perused and evidence of the items in the bill of costs verified because there are items on instructions fees and court attendances among others.
9. I see no order of the Deputy Registrar calling for the Chief Magistrate's ELC court file. And even if she was to call for that file which she did not, the danger is that she will be asking this court to assume jurisdiction over an ELC file.
10. In her own Ruling on Taxation dated 5th February 2024, the Deputy Registrar stated as follows:

“The Bill was not responded to or opposed. I also note that the file arose from the ELC No. E011 of 2020 and the same should have been filed before the ELC High Court to be determined by the Deputy Registrar ELC High Court. But since the Bill is here, I shall tax the same but in limbo on where the file will be taken to have a reference.”
11. The Deputy Registrar acknowledged that she had difficulties understanding where the Reference if any arose, would be filed. She should have downed her tools. She went beyond her jurisdiction.
12. This court is a court of record. It must correct the errors committed by the Deputy Registrar and set the record straight.
13. In the end, for want of jurisdiction, on my own motion, I set aside and quash the taxation and Ruling of 5th February 2024 and vacate the certificate of taxation issued on 19th February 2024.
14. The Advocate Client Bill of costs as filed in this court dated 7th September 2023 is struck out. The Applicant to file his Bill of costs before the Environment and Land Court for consideration afresh.
15. I make no orders as to costs and this file is closed.
16. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF MAY, 2024

R. E. ABURILI

JUDGE

