



**Robinson Onyango Malombo t/a O.M. Robinson & Company Advocates v NIC Bank Limited  
(Miscellaneous Civil Case E076 of 2023) [2024] KEHC 5695 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5695 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CIVIL CASE E076 OF 2023  
DKN MAGARE, J  
MAY 23, 2024**

**BETWEEN**

**ROBINSON ONYANGO MALOMBO T/A O.M. ROBINSON & COMPANY  
ADVOCATES ..... APPLICANT**

**AND**

**NIC BANK LIMITED ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of the chamber summons application dated 19/2/2024. They state that the bill was taxed at Kshs. 14,586,718.33 in circumstances. Though the applicant complains that the only reason the bill was attached on the aspect on being allowed due to it being unopposed, there is no attack on each ground.
2. Ground I, is attached that only interlocutory applications and mentioned have attended. The attendances go to the particulars of each item. There is no impugning on any Item.
3. The same was responded to. The Respondent raised issue that there is no express objection to the Items. They stated that the bill was drawn to scale.

**Analysis**

4. The jurisdiction is taxation is everything. It is set out in Rule 11(1) of the [Advocate Remuneration Rules](#) as doth: -

“(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.



- (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
- (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
- (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired."

5. It is understood that without jurisdiction there is no power to tax. *Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, Justice Nyarangi JA, as then he was stated as follows: -

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority: "By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given."

6. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, the supreme court stated as doth: -

"This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the



legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

7. The court will therefore assume jurisdiction where it has and eschew jurisdiction where none exists. I have not seen any objection to each of the Items.
8. The only objection is the casualness of perusal. This is not a ground for objecting to taxation. I have not seen any *raison d'être* for objecting. Given the circumstances, I dismiss the application dated 19/2/2024. With costs of Kshs. 20,000/=.
9. Given that there is no longer an objection, I allow the earlier application to enter judgment for the Advocate.

#### **Determination**

10. In the circumstances I make the following orders: -
  - a. The application dated 19/2/2024 is dismissed with costs of 20,000/=.
  - b. Judgment is entered for Kshs. 14,586,718.33
  - c. Interest at 9% from 25/6/2023.
  - d. The file is closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 23<sup>RD</sup> DAY OF MAY, 2024.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Mr. Mohammed for Applicant

N/A for Respondent.

Court Assistant - Brian

