



Narok County Government v Kemboy Law Advocates (Miscellaneous Civil Application E073 of 2023) [2024] KEHC 9105 (KLR) (15 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CIVIL APPLICATION E073 OF 2023**

**F GIKONYO, J
JULY 15, 2024**

BETWEEN

NAROK COUNTY GOVERNMENT APPLICANT

AND

KEMBOY LAW ADVOCATES RESPONDENT

RULING

Omnibus Stay of Bill of Costs

1. Vide application dated 11/08/2023, the client/applicant sought orders of temporary stay of taxation of matters filed in this court pending reconciliation of accounts and verification of transaction records between the advocate and the client to prevent loss of public funds.
2. The advocate /respondent filed a notice of preliminary objection dated 24/08/2023.
3. The respondent raised the following preliminary objection: -
 - a. That there is no competent Suit before the Honourable Court, within the meaning of section 2 of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, capable of availing injunctive relief to the Applicant either as sought or at all.
 - b. That in view of the express provisions of Order 40 Rule 2, this Honourable Court lacks jurisdiction to entertain the Applicant's claim.
 - c. That in any event, this Court lacks the jurisdiction to issue any of the Orders sought in the application in view of the provisions of Articles 162 (2) and 165 of *the Constitution* of Kenya, 2010 as well as sections 48 and 49 (a) of the *Advocates Act* as read together with Paragraphs 11, 12 and 13A of the *Advocates (Remuneration) Order*, 2009.



- d. That consequently, the Applicant's Notice of Motion Application dated 11th August, 2023 is incompetent and ought to be dismissed with costs to the Respondent.
4. The client/applicant opposed the preliminary objection vide reply to preliminary objection dated 30/08/2023.

Background

5. The Respondent was legal counsel for the Applicant and its predecessors, including the Transmara County Council and the County Council of Narok, over approximately 20 years. During this tenure, numerous legal cases were successfully concluded, yet legal fees remain outstanding and unpaid.
6. At the point of termination of the Advocate/Client relationship, the Respondent was actively managing a substantial portfolio of over 110 legal matters across various courts within the Republic on behalf of the Applicant, all of which necessitated due payment of legal fees. The Applicant is fully aware of the Respondent's rightful entitlement to legal fees pertaining to these numerous matters, and due notice of the intention to initiate legal action to recover these fees was duly conveyed to the Applicant.
7. However, the Applicant has not settled the said legal fees, and thus the Respondent was left with no other option than to file various Bills of Costs in different Courts within the Republic including both at the Narok High Court and the Narok Environment and Land Court in a bid to recover the said legal fees through taxation as is lawfully permitted.
8. The respondent has filed in this court several bills of cost including Narok High Court Miscellaneous applications Nos. E004, E007, E024, E025, E026, E027, E028, E029, E030, E031, E031, E032, E034, E025, E045, E046, E047, E048, E049, E050, E051, E052, E053, E054, E055, and E058.
9. The matters subject to taxation have, by and large, progressed considerably within the respective Courts, with some having already undergone the taxation process, and execution notices have been duly dispatched while in most especially those filed in this Court and in the Narok, ELC are pending Taxation Rulings.
10. In all of those matters, the Applicant has filed various objections and responses opposing taxation of various items in the said Bills of Costs. It has also produced and relied on all the documents attached to its Application dated 11th August, 2023 in purported support of its said objections.
11. Through the Application dated 11th August, 2023, the Applicant brought these proceedings in a bid to obtain two principal orders:
 - i. That this Honourable Court be pleased to issue a temporary stay of taxation proceedings of all the Advocate-Client Bills of Costs filed in this Honourable Court pending the hearing and determination of this Application.
 - ii. That this Honourable Court be pleased to issue a temporary stay of taxation proceedings all the Advocate-Client Bills of Costs filed in this Honourable Court pending a reconciliation of accounts and verification of transaction records between the parties herein.
12. It is important to note that this application is not a taxation of Advocate-client Bill of Costs.

Directions of the Court

13. The preliminary objection was canvassed by way of written submissions.



The Applicant's Submissions.

14. The applicant submitted that by filing the several taxation matters before this court, the respondent subjected itself to the powers of this court which include the powers to issue directions and orders as the court may deem fit and ultimately make a final determination in the matters. The applicant contends that this court has the power and discretion to issue orders of stay in the said matters amongst other orders. There is no known law, precedent, or otherwise that stops this court from issuing orders of stay of taxation proceedings nor at all. The applicant relied on the case of *China Qingjian International Group (K) Limited v Yandong & 3 Others* [2023] KEHC 18386 (KLR).
15. The applicant submitted that the points of law relied upon by the respondent are irrelevant in the circumstances and/ or have no nexus to the matter that is before this court.
16. The Applicant Submitted that this court has the discretionary power as granted by Article 165 to order that taxation proceedings be stayed where there exists sufficient and reasonable grounds and/ or reasons. The applicant relied on the cases of *Kwengu & Co. Advocates v Invesco Assurance Co. Limited* [2012] eKLR, *Patrick Wafula Kuloba v Director/ Chief Executive Officer, and Kenya Industrial Research & Development Institute* [2021] eKLR.
17. In the end the applicant prayed that the preliminary objection dated 24/08/2023 be dismissed with costs.

The respondent's submissions.

18. The respondent submitted that there is no suit appropriately filed by the Applicant before this Honorable Court that would have formed the basis and foundation of the Application dated 11th August, 2023. The Respondent contends that these proceedings were commenced through a miscellaneous Application is unquestionable defective in form as it is in blatant disregard of the basic rules of Civil Procedure which mandate that for that Application to regularly exist, a Suit/Claim must properly be before this Honourable Court. However, as no such Suit/Claim has been advanced for which that Application may thereon be founded, the same is an unprocedural, incompetent, vexatious, and complete abuse of the Court process. The respondent further contends that the provisions for which Applicant's miscellaneous Application dated 11th August, 2023 is grounded, Orders 40 of the *Civil Procedure Rules, 2010*, stipulates as a condition precedent that for it to apply, there must be a suit already filed. The respondent relied on *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR: Nairobi Miscellaneous Application No. 86 of 2005; *Peter Mwema Kaboro & Another v Benson Maina Githethuki* [2005] eKLR, *Eutyclus Muthui v Apollo Nteere M'Abutu & 2 others* [2009] eKLR, Meru High Court Miscellaneous Application No. 82 of 2007, *Rajab Kosgei Magut v Nuru Jepleting Choge* [2020] eKLR, *Synergy Industrial Credit Limited v Mitchell Cotts Freight (K) Ltd* [2020] eKLR and *Proto Energy Limited v Hashi Energy Limited* [2019] eKLR and *Joseph Kibowen Chemjor v William C Kisera* [2013] eKLR
19. The respondent submitted that this court does not possess jurisdiction to adjudicate upon and make a determination on the Applicant's Application dated 11th August, 2023. The respondent contends that the Applicant's entreaties to this Court for it to issue an order to stay the taxation of all the 56 Bills of Costs filed in the various Courts at the Narok Law Courts (both in this Court and at the Narok ELC), risk blurring the clearly defined lines prescribed by legal statutes. The requests made by the Applicant lack a sound legal foundation, potentially leading the High Court to overstep its jurisdiction and encroach upon the territory of separate and self-governing courts. The respondent relied on *Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited* (*supra*), *Benjamin Leonard Macfoy v United Africa Company Limited* (UK) [1962] AC 152, *Samuel Kamau Macharia & Another*



v Kenya Commercial Bank Limited & others [2012] eKLR, *The Matter of Advisory Opinions of the Court under 163 of the Constitution (Constitutional Application No. 2 of 2011* at para 30), *Orange Democratic Movement v Yusuf Ali Mohamed & 5 others* [2018] eKLR, and *Republic v Karisa Chengo & 2 Others* [2017] eKLR.

20. The respondent submitted 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. The respondent relied on paragraphs 11, 12, and 13A of the Principal *Advocates (Remuneration) Order*, 2009, sections 48 and 49(a) of the *Advocates Act*, *Sharma v Uburu Highway Development Ltd* [2001] 2 EA 531, *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2021] eKLR, *C.B. Gor & Gor v Oriental Commercial Bank Limited (formerly known as Delphis Bank Limited)* [2018] eKLR, *Hezekiah W. Gichohi v Uburu Highway Development & Others* [2011] eKLR, *Stanley Mwandoo Righa v Braimoh Joseph Mburu* [2014] eKLR, and *Tom Ojienda & Associates v Mumias Sugar Company Limited & another* [2018] eKLR.
21. In the end the respondent submitted that the Preliminary Objection raised is merited and the Applicant's Miscellaneous Application dated 11th August, 2023 should be struck out with costs to the Respondent.

Analysis and Determination

22. This court has considered the notice of preliminary objection, the response thereto, and the respective parties submissions.

Issues

23. The issue for determination is: -
Whether the Applicant can, through a Miscellaneous Application, legitimately seek for omni-bus injunctive orders to stay taxation proceedings which are in different courts and at different stages.
24. The Respondent objects to these proceedings on two fronts. First, as being unquestionably defective in form as it is in blatant disregard of the basic rules of *Civil Procedure* which requires a suit on which an Application is to be premised. And, two, for being incompetent in seeking for omni-bus injunctive orders against taxation of client-bill of costs which are before different court and at different stages- some are already taxed.
25. As per Law, JA; -
“...a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.” (*Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd* (1969) EA 696)
26. Further Sir Charles Nebbold, P stated thus: -
“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does



nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

27. A preliminary objection should therefore not require probing of evidence to prove. And, should be capable of disposing of the case.
28. The application herein was commenced by way of miscellaneous application seeks for an omni-bus injunction against all bill of costs filed by the advocate against the applicant, which are filed in different courts and at different stages. Some are already taxed.
29. This court(H. Nyaga J) who perused the application during vacation had intimated to the applicant that the grounds adduced can be presented before the taxing officer in each bill of costs.
30. The position taken by Nyaga J is in perfect harmony with the law, practice and procedure on taxation of bill of costs. The method adopted in the application before the court, is not only inappropriate but incopentent to deliver the relief sought.
31. Therefore, the Notice of Motion dated 11/08/2023 is hereby struck out with no orders as to costs.
32. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 15TH DAY OF JULY, 2024.

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HON. F. GIKONYO M.

JUDGE

In the presence of:-

C/A: Otolu

Kere for Respondent – Present

Ms. Lyonah for Maina for Applicant – Present

