



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**MISC. APPLICATION NO. 117B OF 2014**

**INDIPENDENT MEDICO-LEGAL UNIT(IMLU).....APPLICANT**

**LIZ CATHERINE WANGARI MWANGI.....1ST RESPONDENT/INTERESTED PARTY**

**HON. ATTORNEY GENERAL.....2ND RESPONDENT/INTERESTED PARTY**

**VERSUS**

**MORRIS GUCHURA NJAGE.....RESPONDENT/APPLICANT**

**R U L I N G**

1. This is a ruling on a preliminary objection raised by the respondent against an application for the taxation of bill of costs dated 18/05/2015 filed by the applicant. In his submissions the respondent raised the following issues:

*(1) Whether the application is barred by virtue of Order 9 Rule 7, 9 and 10 of the Civil Procedure Rules, 2010.*

*(2) Whether the application is barred by privity of contract.*

*(3) Whether the application is barred by section 45(2) & (2A) of the Advocates Act.*

*(4) Whether the application is barred by section 51 of the Advocates Act.*

*(5) Whether the Honourable Judge has jurisdiction to tax the Advocate/Client Bill of Costs.*

2. The application was opposed by the applicant who argued that a preliminary objection should be on a pure point of law and not of facts as was held in the case of **MUKISA BISCUITS CO. VS WEST END DISTRIBUTORS LTD EALR [1969] 696**.

3. It was further argued that by filing written submissions, the respondent is relying on facts and not on points of law. The respondent has enumerated the facts relied on in his submissions and for that reason the preliminary objection must fail.

4. The applicant submitted that the applicant has not changed advocates in this miscellaneous application and that the issue of non-compliance with Order 9 Rule 7, 9 and 10 of the Civil Procedure Rules does not arise. In his submissions the respondent refers to another suit between the parties Embu HCCC No. 31 of 2007 in which judgment was delivered. The matter before this court is a miscellaneous application filed by the respondent.

5. It is further argued that the issue of privity of contract is not a pure point of law for the reason that the court will have to ascertain the same as a matter of fact. It was also pointed out that the said issue was decided in the ruling of Ong'udi, J. in the ruling delivered on 1st of August, 2014. The issue is therefore *res judicata*.

6. The issue of non-compliance with Section 45(2) and 2A of the Advocates Act was also decided conclusively in the same ruling.

7. The respondent raised the issue of whether the application is barred by Section 51 of the Advocates Act. It was submitted that since the retainer and certificate of taxation between the advocate and client has not been issued, Section 51 of the Act does not apply.

8. The applicant further argues that he has maintained that the application for taxation be handled by the deputy registrar and not the judge. The issue raised by the respondent as to whether the judge has powers to tax a bill does not arise.

9. I am in agreement with the applicant that most of the issues raised in this preliminary objection have been heard and determined in the ruling of Ong'udi, J. delivered on 1st of August, 2014 and in the ruling of this court delivered on 16th of August, 2016. These issues include that of privity of contract and the request for review of the orders of Ong'udi, J. by this court.

10. In the respondent's application dated 9th of November, 2015, the court dismissed the prayers for review of Ong'udi, J.'s ruling which have now been introduced in this preliminary objection using different language. This is an abuse of the due process of the court for the respondent to keep taking the court back and forth.

11. The issues arising in this application may be narrowed down as follows:-

*(1) Whether the applicant is in violation of Order 9 Rule 9 of the Civil Procedure Rules.*

*(2) Whether this court is empowered to tax the bill.*

12. I have perused this file and note that this miscellaneous application was brought by the respondent by way of originating summons. The applicant filed her replying affidavit in response of the application. Thereafter the respondent successfully applied to be joined as a party to these proceedings. The pleadings in this miscellaneous application do not indicate that there has been any change of advocate. Neither does it show that any judgment has been delivered. In effect, therefore, the provisions of Order 9 Rule 9 do not apply.

13. On the issue of taxation of the bill, the applicant has not in any way suggested that he wanted the judge to tax the bill of costs. The jurisdiction for taxation of a bill of costs is donated to the deputy registrar by virtue of the Advocates Remuneration Order. I find no basis in the argument that this court has no jurisdiction to tax the bill of costs.

14. Consequently, I find no merit in this preliminary objection and it is hereby dismissed with costs to the applicant.

15. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 4<sup>TH</sup> DAY OF APRIL, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**1. Mr. Otwal for Kiarie for Applicant**

**2. Mr. Gachuba for Respondent**