



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC. CIVIL APPLICATION NO. 56 OF 2014

V. CHOKAA & COMPANY ADVOCATES.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU....RESPONDENT

RULING NO. 2

1. The applicant prays that the decision of the learned Deputy Registrar (Ms. P. Mbulikah) delivered on 13th March 2015 be set aside. The learned Deputy Registrar struck out the consolidated *advocate-client bills of costs* lodged by the applicant against the respondent. The applicant is aggrieved.
2. The original chamber summons challenging the decision was not presented within the prescribed time. On 6th July 2015, and for considered reasons, I extended the time for filing the action challenging the decision by *fourteen days*. The applicant then filed the present chamber summons dated 13th July 2015. The pith of the application is that the learned Deputy registrar *exceeded* her *jurisdiction*; and, that she did *not* give notice of her ruling.
3. The summons is contested. The respondent filed grounds of opposition dated 21st July 2015. The gravamen of the objection is that no proper appeal against the decision has been preferred; that the present chamber summons does not constitute such an appeal; that the applicant is estopped from challenging the jurisdiction of the Deputy Registrar by having acquiesced; and, participated in the proceedings. It was submitted further that the Deputy Registrar had power to determine the matter by dint of Order 47 Rule 7 of the Civil Procedure Rules as read together with paragraph 13A of the Advocates Remuneration Order.
4. On 15th March 2016, I heard brief oral submissions by learned counsel for the applicant. The respondent's counsel failed to appear despite being served with a hearing notice. I have considered the application, grounds of opposition and the submissions.
5. The applicant had filed *advocate-client* bills of costs. The learned Deputy Registrar consolidated all the 68 bills. This cause was earmarked as the lead file. The learned Deputy Registrar did not *tax* the bills of costs but *struck* them out for a number of reasons: First, that the bills of costs were incompetent for want of supporting documents such as instruction letters, receipts and so forth; secondly, that the bills were statute barred; thirdly, that although there seemed to be a client-advocate relationship, it was unclear how the debt arose; fourthly, that the fees were payable by the respondent as legal successor to the Eldoret Municipal Council. However, the learned Deputy Registrar held that *she could not order the respondent to start paying pre-existing liabilities unless the Transitional Authority gave the criteria for sharing assets and liabilities*. Fifthly, the learned Deputy Registrar found that the applicant lacked legal capacity to present the action.
6. The powers of the Deputy Registrar are clearly delineated by Orders 47 and 49 of the Civil Procedure Rules 2010; and, the relevant Rules in the Advocates Remuneration Order. In this case the respondent had filed a notice of motion dated 18th August 2014 praying that the bills of costs

- be consolidated; and, thereafter be dismissed or struck out.
7. The Deputy Registrar found in favour of the respondent. Obviously, the learned Deputy Registrar had *power* to interrogate whether there was sufficient evidence of a *client-advocate relationship*. That was the crux of the bills; and, the question was germane to the payment of instruction fees. See *Wanga & Company Advocates v APA Insurance Company Limited*, High Court, Eldoret, Misc. Civil Appl. 24 of 2006 [2006] eKLR.
 8. I however express serious doubts that the learned Deputy Registrar had *jurisdiction* to deal with the other preliminary objections namely: whether the bills were *statute barred*; whether the applicant had legal capacity to present the bills; or, whether the respondent was the successor to the defunct municipality; or, liable for the debt. Those were the type of questions that should have been referred to the *opinion* of the *judge* in chambers. Although order 47 Rule 7 allows a District Registrar to deal with *preliminary or interlocutory* applications, the power can only be exercised in the *absence of a judge*. That was not the case here. Furthermore, the decisions she made were not in furtherance of *taxation* of the bills but in striking them out *in limine*. See *Abincha & Company Advocates v Trident Insurance Company Limited*, High Court, Nairobi, Misc. Civil Appl. 527 of 2011 [2013] eKLR.
 9. I would thus have been prepared to set aside the impugned decision. Unfortunately, there is no proper *appeal* before me. The present chamber summons is anchored upon Order 47 Rule 8 of the Civil Procedure Rules 2010. A party aggrieved by the preliminary or interlocutory decision of the District Registrar may appeal to a judge. Rule 8 (2) is couched in *mandatory* language. It provides that-

“Such appeal shall be by way of endorsement upon the record by the District Registrar at the request of any party within fourteen days from the date of making of such order or decision, and the record bearing such endorsement shall forthwith be sent to the Registrar of the High Court who shall give such directions for the hearing of the appeal as he may consider reasonable”.

10. Clearly I have no such appeal. The applicant should have taken full advantage of my earlier order extending the time within which to challenge the decision of the Deputy Registrar. If I be wrong on that finding, I still find that the chamber summons is incompetent as there was no *taxation* of costs under the Advocates Remuneration Order. Had that been the case, then the chamber summons would have constituted the *review* contemplated by Rule 11 of the Advocates Remuneration Order.
11. It must follow as a corollary that the chamber summons dated 13th July 2015 is incurably defective. It is dismissed. Costs follow the event and are at the *discretion* of the court. In the interests of justice; and, considering that the respondent’s counsel did not attend to the hearing; and, considering further the plight of the applicant, I order that each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 5th day of April 2016

GEORGE KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. V. Chokaa for the applicant.

Mr. Njuguna for Mr. Yego for the respondent.

Mr. J. Kemboi, Court clerk.