



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISC APPLICATION NO. 345 OF 2016**

**MUSYOKA, WAMBUA & KATIKU ADVOCATES.....ADVOCATE/APPLICANT**

**=VERSUS=**

**GOLDROCK INTERNATIONAL**

**ENTERPRISES LIMITED.....CLIENT/RESPONDENT**

**RULING**

1. Before me for determination in this suit (Miscellaneous Application Number 345 of 2016) are two applications. The first application is the Advocate's notice of motion dated 27/5/2019, seeking entry of judgment in terms of the certificate of taxation dated 23/5/2019. The second application is the client's chamber summons dated 5/11/2019, seeking extension of time within which to bring a reference to challenge the taxing officer's award contained in the above certificate of taxation. The two applications were canvassed simultaneously, through written submissions.

2. What emerges from the court record is that, the advocate brought this suit on 8/12/2016 through an advocate-client bill of costs dated 6/12/2016 and drawn in the sum of Kshs 8,778,539.40. Subsequently, the taxing officer of the court, Hon I N Barasa, considered the bill of costs and rendered a ruling dated 4/9/2017 through which she struck out the said bill of costs. She rendered herself thus:

***“The word used in rule 69 is ‘shall’ denoting a mandatory provision. I have carefully perused the present bill of costs. It has four columns; the first and second columns are not tiled. The third column is titled amount charged and the last column is titled amount taxed. The dates that the services were offered has not been specified. For instance, it is not clear what date the respondent instructed the applicant as the date has not been specified. This goes for all the other items in the bill of costs. It is therefore difficult to tell with certainty the specific dates that the services were offered. As I have noted above, this is a mandatory provision. I am of the considered opinion that in these circumstances, I am afforded no option but to strike out the bill of costs for being drawn in contravention of the said rule 69. There shall be no order as to costs.”***

3. Subsequent to the striking out of the bill of costs constituting this suit, the advocate drew a fresh bill of costs dated 26/1/2018 under the same cause number, and caused it to be filed in the present cause which had been struck out by the taxing officer way back on 4/9/2017. Oblivious of the fact that this cause was struck out on 4/9/2017, the new taxing officer, Hon D Orago, proceeded to tax the new bill of costs in the struck out cause, and rendered an award dated 24/4/2019 in the struck out cause. The resultant award is what constitutes the certificate of taxation giving rise to the two parallel applications.

4. Having been invited to exercise jurisdiction in the matter, I have asked myself the question as to whether or not there exists a suit in which to exercise jurisdiction as invited. Regrettably, in my interpretation of the law, the taxing officer having struck out the original bill of costs dated 6/12/2016, the suit/cause herein was fully disposed. The advocate-client bill of costs having been struck out for non-compliance with mandatory requirements of the law, the option available to the advocate was to bring a fresh bill of costs in a fresh cause. The option of bringing a fresh bill of costs in the same cause is not available in the circumstances. The option of bringing a fresh bill of costs in the same cause is only available in relation to a party and party bill of costs, which is normally filed in the substantive suit between the parties. An advocate-client bill of costs constitutes a distinct cause. Once an advocate-client bill of costs is struck out, the suit is disposed and cannot form the platform on which to canvass a fresh bill of costs.

5. The tenor and import of the order striking out the original bill of costs dated 6/12/2016 is that, the cause (Misc Application Number 345 of 2016) was struck out and was not available as a platform on which to canvas the new bill of costs. Secondly, the subsequent taxation before Hon D Orago was an exercise in futility and a nullity *ab initio*, because this suit had been struck out.

6. Regrettably, none of the advocates involved in this matter noticed this obvious misadventure and illegality. I have deeply agonized on the appropriate way to deal with this matter in these most unfortunate circumstances. In my view, to overlook the fact that this suit was struck out on 4/9/2017 and remains struck out to date, would be a monumental error on my part. A striking out order is not a minor procedural error to be overlooked by a judge; it has fundamental jurisdictional implications.

7. In the circumstances, it is my finding that the subsequent bill of costs drawn and filed within this cause subsequent to the striking out order of 4/9/2017; the taxation thereof; and the resultant certificate of taxation dated 8/5/2019, are all nullities. They all stand struck out with no order as to costs.

8. In light of the above findings, the advocate's notice of motion dated 27/5/2019 and the client's chamber summons dated 5/11/2019 are both disposed in the following terms:

*a) The original bill of costs initiating this suit having been struck out on 4/9/2017, the cause ceased to be available as a platform on which to bring and/or tax the subsequent advocate-client bill of costs dated 26/1/2018.*

*b) The subsequent advocate-client bill of costs in this cause, dated 26/1/2018; the subsequent taxation exercise herein; and the subsequent certificate of taxation dated 8/5/2019, are all nullities and are hereby expunged.*

*c) The advocate shall have the liberty to file a fresh bill of costs in a fresh cause.*

*d) The parties shall bear their respective costs of the two parallel applications.*

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF SEPTEMBER 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of: -**

Mr Mwango holding brief for Mr Sisule for the client/respondent

Mr. Maina for the Advocate/applicant

Court Clerk - June Nafula