

**IN THE COURT OF
APPEAL AT ELDORET**

(CORAM: WARSAME, MATIVO & GACHOKA,

JJ.A.) CIVIL APPEAL NO. ELD 17 OF 2020

BETWEEN

VINCENT CHOKAA ADVOCATES.....APPLICANT

AND

COUNTY GOVERNMENT OF UASIN GISHU.....RESPONDENT

(Being an appeal from the judgment of the High Court of Kenya at Eldoret (S. M Githinji, J.) dated 10th March, 2020

in

HCCC No. 56 of 2014)

JUDGMENT OF THE COURT

1. Before us is an appeal from the judgment of the High Court of Kenya at Eldoret (S. M. Githinji, J.) delivered on 10th March 2020 in Miscellaneous Civil Application No. 56 of 2014, by which the learned judge dismissed, with costs. The appellant's application that sought to set aside the ruling of the Deputy Registrar (Hon.

P. W. Mbulikah) delivered on 13th March 2015, which struck out the appellant's advocates/client bills of costs. In order to

place

the appeal in its proper context, we find it necessary to trace the factual and procedural history of this matter from its origins.

2. In the year 2007, Vincent Chokaa, an advocate of the High Court of Kenya practising under the firm name V. Chokaa & Co. Advocates, received instructions from the Town Clerk of the Municipal Council of Eldoret to demand and recover outstanding rates arrears owed to the Council by various rates defaulters.
3. The appellant contends, however, that notwithstanding the services rendered, his firm was never remunerated for its professional services. The Municipal Council of Eldoret thereafter ceased to exist upon the repeal of the Local Government Act (Cap. 265) by section 134 of the County Governments Act, No. 17 of 2012, with the County Government of Uasin Gishu, the respondent herein, emerging as its successor by virtue of section 33 of the Sixth Schedule to the Constitution of Kenya, 2010.

4. It was on that basis that the appellant, in the year 2014, presented his bills of costs for taxation against the respondent, contending that the County Government of Uasin Gishu, as the legal successor to the defunct Council, had inherited the

obligation to settle the outstanding fees from his engagement in respect of 69 alleged rate defaulters.

5. Upon being served with the bills, the respondent, by a notice of motion dated 18th August 2014, applied to have the bills consolidated and thereafter struck out. The application was supported by the affidavit of Peter Leley, the County Secretary of the respondent who denied that any advocate/client relationship had ever existed between the appellant and the defunct Municipal Council of Eldoret, that the appellant's firm was never instructed to demand rates arrears on behalf of the Council at any time, and was not among the firms prequalified to offer legal services to it. He further contended that the bills were incompetent for want of leave, time-barred under the Limitation of Actions Act, and that the respondent had no responsibility for the pre-devolution liabilities of the defunct Council in the absence of a proper transfer of such liabilities by the Transitional Authority.
6. The notice of motion came before the Deputy Registrar, Hon. P.W. Mbulikah, sitting as a taxing master. In a ruling delivered on 13th

March 2015, the Deputy Registrar allowed the respondent's application and struck out the appellant's consolidated bills of costs. In arriving at that decision, the Deputy Registrar determined six issues.

7. On the question of whether an advocate/client relationship existed, she found on a balance of probabilities that the firm of V. Chokaa had a client-advocate relationship with the defunct Municipal Council of Eldoret. On the question of payment and whether a debt had accrued, she found that while any services rendered were payable by the defunct Municipal Council, it was not clear from the evidence how the debt of Kshs. 10,112,269 had arisen, the attached fee note being broad and vague, and the appellant having failed to annex a listing of demand letters or demonstrate whether any lawsuit had been filed to recover the debt on behalf of the client. On the successor liability question, she found that the County Government of Uasin Gishu was indeed the successor of the Municipal Council of Eldoret, but that the court had no authority to order payment of pre-existing liabilities without

the Transitional Authority first giving criteria

as to how the assets and liabilities of the defunct Council
were

to be shared. On the propriety of the bills, she found that the appellant had filed only a bill of costs without an accompanying application and without annexing the requisite supporting documents, and accordingly found that the bills were not properly before the court. On the question of limitation, she found that the bills of costs were time-barred. Finally, on the question of legal capacity, she found that the appellant, being a sole proprietor, was not capable of suing in the firm's name.

8. Aggrieved, the appellant filed a chamber summons before the High Court seeking to set aside that decision. The matter proceeded before Kimondo, J. The learned judge expressed reservations about the Deputy Registrar's conduct of the proceedings, finding that the issues of whether the bills were time-barred, whether the appellant had legal capacity to present the bills, and whether the respondent was liable for the debt were matters that ought to have been referred to a judge in chambers rather than determined by the Deputy Registrar. Notwithstanding those reservations, the Judge declined to grant the relief sought on the dispositive ground

that no proper appeal

was before him, the appellant having failed to comply with the

mandatory provisions of Order 47 Rule 8(2) of the Civil Procedure Rules, 2010, which require that an appeal from a decision of the Deputy Registrar be initiated by way of an endorsement upon the record within fourteen days of the impugned decision, and not by way of an originating application. The chamber summons was accordingly dismissed on 5th April 2016.

9. Undeterred, the appellant filed an appeal before this court. By a judgment delivered on 28th June 2019, the court allowed the appeal and set aside the order of the High Court, directing that the matter be remitted for re-hearing before another judge. The Court held that while the appellant's mode of appeal did not strictly comply with Order 47 Rule 8(2) of the Civil Procedure Rules, 2010, that deficiency was a mere procedural technicality that ought not to be elevated above the imperative to administer substantive justice under Article 159 of the Constitution. On the substantive question of the Deputy Registrar's jurisdiction, this Court reiterated that "*a taxing master would have the authority to determine whether or not a bill of costs is properly before her the same way that*

she would be entitled to determine whether or

*not a client would be entitled to pay fees for services rendered
by*

an advocate", and found that the High Court had erred in holding that the Deputy Registrar lacked jurisdiction to make a determination on the propriety of the bills of costs.

10. Pursuant to that order, the matter was remitted for rehearing and came before Hon. Justice S. M. Githinji for re-hearing. Both parties filed written submissions. The learned judge, having considered the matter afresh, dismissed the appellant's chamber summons with costs by a judgment delivered on 10th March 2020. The learned judge upheld the Deputy Registrar's decision in its entirety, holding that:

"In the premises, the application fails in its entirety as it was founded on want of jurisdiction. The Deputy Registrar has powers to determine an objection as to the competency of a bill despite serving as a taxing master and that is what was done in this matter. The Court of Appeal, in redirecting this matter for hearing at Eldoret Civil Appeal No. 43 of 2016 made the same observation. The application is incompetent as an appeal cannot be filed by way of an application but by a Memorandum of Appeal preceded by an endorsement by the Deputy Registrar."

11. It is against that judgment that the present appeal lies. the

appellant has filed a Memorandum of Appeal dated 16th July

2020, raising four grounds of appeal. In summary, the appellant contends that the learned judge erred in holding that the Deputy Registrar's striking out of the bills constituted a lawful exercise of her powers under Order 47 Rule 7 of the Civil Procedure Rules, 2010 and paragraph 13A of the Advocates (Remuneration) Order; that any deficiency in the material placed before the Deputy Registrar went only to the quantum of the costs and not their competency; that the Deputy Registrar's power to determine the competency of bills could not extend to the broader substantive issues she purported to determine, including questions of successor liability, limitation, the requirement for leave, and the appellant's capacity to sue in a firm name.

12. The matter came up for hearing before us on 19th January 2026, with Mr. Keyonzo appearing for the appellant and Ms. Chelimo, holding brief for Mr. Yego, appearing for the respondent. Both parties relied on their written submissions, while Mr. Keyonzo indicated that the appellant's main arguments were confined to grounds two and three of the Memorandum of Appeal; namely that the striking out of the

bills was not a proper exercise of the
taxing master's powers under paragraph 13A of the Advocates

(Remuneration) Order, and that any deficiency in the material placed before the Deputy Registrar went only to the quantum of the costs and not their competency.

13. The appellant's case, as articulated by Mr. Keyonzo, was that while it conceded that a Deputy Registrar has power to interrogate and call for documents in determining a bill of costs, the insufficiency of documents was not a proper ground for striking out a bill of costs, and that the issues determined by the Deputy Registrar were matters that ought to have been referred to a judge in chambers. In support, the appellant placed reliance on this Court's earlier judgment in **Civil Appeal No. 43 of 2016** in this very matter, in which this Court had held that the taxing master's jurisdiction extended to determining the competency of a bill of costs.

14. The respondent, its part, contended that the question of the Deputy Registrar's jurisdiction had already been conclusively settled by this Court in **Civil Appeal No. 43 of 2016**, and that the learned judge was correct in upholding the Deputy Registrar's decision. The respondent further contended that

the

appellant was estopped from challenging the Deputy Registrar's jurisdiction, having participated in the proceedings without raising any jurisdictional objection at the time. In support of the proposition that a bill of costs filed more than six years after completion of the work is statute-barred under section 4(1) of the Limitation of Actions Act, the respondent cited **Abincha & Co. Advocates v Trident Insurance Co. Ltd [2013] eKLR** (Nairobi HC Miscellaneous Civil Application No. 527 of 2011). The respondent further relied on **Wanga & Company Advocates v APA Insurance Company**, Eldoret HC Application Nos. 24, 17, 18, 19, 20 and 22 of 2006, for the proposition that an advocate's letter of instructions must specify the action to be undertaken, and that where it does not, and the advocate was not prequalified to provide the services in question, the instructions are dubious and the resulting claim incompetent.

15. Having considered the grounds of appeal, the submissions of counsel, and the record before us, we discern two issues for determination, namely:

a) *Whether the Deputy Registrar sitting as a taxing master*

had power to strike out the appellant's bills of costs.

b) *Whether the appellant approached the High Court by the correct procedure.*

16. The jurisdictional question was conclusively settled by this Court in Eldoret **Civil Appeal No. 43 of 2016** in this very matter, and was thereafter affirmed by the learned trial judge upon remittal. In that earlier judgment, this Court held, with clarity, that a taxing master "*would have the authority to determine whether or not a bill of costs is properly before her the same way that she would be entitled to determine whether or not a client would be entitled to pay fees for services rendered by an advocate.*"
17. The Court further reiterated the position in **C. B. Gor & Gor v Oriental Commercial Bank Limited (formerly known as Delphis Bank Limited) [2018] eKLR** (Civil Appeal No. 110 of 2016), that the contention that a taxing master's jurisdiction is limited to the bare taxation of bills of costs, such that it could not extend to challenges against their competency, does not hold water. The learned trial judge, in the judgment under appeal, correctly applied those precedents.

18. The source of the Deputy Registrar's jurisdiction is found in the combined operation of paragraphs 10 and 13A of the Advocates

(Remuneration) Order. Paragraph 10 confers the power to tax bills of costs, while paragraph 13A, which is expressed in broad and purposive terms, clothes the taxing officer with the power and authority "*to summon and examine witnesses, to administer oaths, to direct the production of books, paper and documents and to direct and adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.*"

19. The phrase "*any matter in dispute before him*" is significant. A taxing master seized with a bill of costs that is met with a formal objection challenging its very foundation whether for want of an underlying advocate-client relationship, limitation, absence of leave, or deficiency of supporting material is necessarily seized with a "*matter in dispute.*" It would be absurd to hold that the taxing master must tax the bill regardless of such objections, only to have the resulting determination set aside on review.
20. The appellant's further submission that the Deputy Registrar ought to have referred the substantive issues to a judge in chambers fares no better and has no statutory foundation.

The

only provision for referral in the relevant legislative framework is paragraph 12 of the Advocates (Remuneration) Order, which allows a taxing officer, with the consent of both parties, to refer any matter in dispute arising out of the taxation of a bill for the opinion of the High Court and no such consent was sought or given. Without appearing repetitive, we think, we have said enough to show that this ground is baseless.

21. Having resolved the first issue against the appellant, the second issue invites this Court to consider whether the learned trial judge was correct in dismissing the appellant's chamber summons on the ground that it did not conform to the mode of challenge prescribed by law. Order 47 Rule 8 of the Civil Procedure Rules, 2010 is unambiguous in its terms. It provides as follows:

"(1) Any person affected by any order or decision of a District Registrar made in any preliminary step or upon an interlocutory application may appeal to a judge; and such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the District Registrar had jurisdiction only by consent.

(2) 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 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.

(3) The hearing of an appeal under this rule shall be before a judge in chambers."

22. The appellant did not follow that procedure. Instead of seeking an endorsement on the record within the prescribed fourteen days, he filed a chamber summons as an originating process which has no statutory foundation as a mode of challenging a decision of the Deputy Registrar. The prescribed procedure under Order 47 Rule 8(2) is not a mere formality. It is the specific mechanism by which the High Court's appellate jurisdiction over decisions of the Deputy Registrar is properly and lawfully invoked. Without compliance with that mechanism, there was, strictly speaking, no competent appeal before the High Court.

23. In **Civil Appeal No. 43 of 2016**, this Court confronted the same procedural deficiency. Having found that the appellant

had not complied with Order 47 Rule 8(2), the Court nonetheless took the

view that to hold the defect fatal "*would be to elevate a procedural technicality at the expense of the substance of the dispute,*" and invoked Article 159 of the Constitution to direct that the matter be remitted for re-hearing on the merits before a different judge. The appellant's chamber summons was thus given a second life not because it was competent, but because this Court extended an indulgence in the interests of substantive justice.

24. The appellant received the re-hearing that was directed. The matter was heard fully on its merits by the learned trial judge and dismissed. The appellant now appeals that dismissal. It is therefore no longer open to the appellant to revisit or re-agitate the procedural competence of the very application that this Court already rescued and sent back for hearing. The chamber summons served its purpose; it was heard; it failed on the merits. There is nothing left in it to save, and Article 159 cannot be called upon to resurrect what has already been fully and finally determined.

25. Article 159 is not a provision upon which a litigant may repeatedly rely to rescue procedural defaults of his own

making.

In **Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others**

[2013] eKLR, this Court declared that Article 159(2)(d) is not "*a panacea, nay, a general whitewash, that cures and mends all ills, misdeeds and defaults of litigation.*"

26. In **Jaldesa Tuke Dabelo v Independent Electoral & Boundaries Commission & Another** **[2015] eKLR**, this

Court went further, holding that where a clear procedure is prescribed by statute, it must strictly be followed, and that a party having chosen the wrong procedure cannot turn around and rely on Article 159, for that Article was neither aimed at conferring jurisdiction where none exists nor intended to derogate from express statutory procedures. Consequently, this ground fails as well.

27. This matter has been litigated before the Deputy Registrar, before the High Court on two occasions, and before this Court twice. At every stage the appellant has been found wanting the merits, on procedure, and on the law. Litigation must come to an end. The procedure is designed to ensure fairness, efficiency and finality in litigation. The appellant did not follow

the correct and

definitive procedure provided under the Civil Procedure Rules, Order 47 Rule 8(2).

28. The appeal lacks merit on all fronts and is dismissed with costs to the respondent.

Dated and delivered at Nakuru this 27th day of February, 2026.

M. WARSAME

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·
JUDGE OF APPEAL

J. MATIVO

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·
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb

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·
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY

REGISTRAR