



**Chaudhri & Associates v Registered Trustees of Sheikh Zayed Bin Sultan Al-Nahyan
(Miscellaneous Application E204 of 2022) [2024] KEELC 93 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 93 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E204 OF 2022
MD MWANGI, J
JANUARY 18, 2024**

BETWEEN

CHAUDHRI & ASSOCIATES ADVOCATE

AND

**THE REGISTERED TRUSTEES OF SHEIKH ZAYED BIN SULTAN AL-
NAHYAN CLIENT**

*(In respect to the Advocate/Applicant's Reference by way of a Chamber
Summons Application dated 30th May, 2023 brought under the
provisions of rule 11(1) and (2) of the Advocates (Remuneration) Order))*

RULING

1. The Chamber Summons Application dated 30th May, 2023 filed by the Advocate/Applicant prays for the setting aside/vacation of the decision of the taxing officer delivered on 19th April, 2023 in regard to Advocate-Client Bill of Costs dated 23rd September, 2022. The Applicant further sought that the Bill of Costs be remitted to a different taxing officer for fresh taxation, with an alternative prayer that this Court taxes the Bill of Costs.
2. The application was premised on the grounds on the face of it and on the supporting affidavit of Mohamed Ferhan Chaudri sworn on 26th May, 2023. The Applicant avers that the taxing officer struck out the Bill of Costs without taxing it on the basis of a Preliminary Objection alleging that there was an agreement between the Applicant and the Respondent on the issue of the Advocates fees.
3. It is the Applicant's case that the Preliminary Objection, as presented by the Respondent, was unsustainable in law as it was grounded on a point of fact rather than Law and required the establishment of the facts.



4. The Applicant therefore asserts that the taxing officer fell into an error of principle and misdirected herself on the Law thereby arriving at an erroneous decision.
5. The Respondent despite being allowed time by the court did not file a response to the application; neither did it file submissions.
6. The Advocate/Applicant on his part filed his submissions in accordance with the court's directions. I have had the opportunity to read the said submissions.

Issues for determination

7. Having considered the application, the submissions filed in support thereof and the impugned ruling delivered on 19th April, 2023 by Hon. I.N Barasa, the sole issue for determination is whether the Taxing Officer erred in principle thereby arriving at an erroneous decision.

Analysis and Determination

8. In any matter before a court of Law, jurisdiction is a central issue. As Nyarangi, JA put it in the case of Owners of Motor vessel 'Lilian S. -versus- Caltex Oil (Kenya) Ltd [1989] eKLR,

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings.”

9. The Court of Appeal in the case of *Jamal Salim -vs- Yusuf Abdullahi Abdi & another [2018]* eKLR, further elaborated on the issue of jurisdiction in the following words:

“Jurisdiction either exists or it does not. Neither can it be acquiesced or granted by consent of the parties. This much was appreciated by this Court in *Adero & Another -versus- Ulinzi Sacco Society Ltd [2002]* IKLR 577 as follows:

- “ 1). ...
- 2). The jurisdiction either exists or does not ab initio...
- 3). Jurisdiction cannot be conferred by the consent of the parties or be assumed on the grounds that parties have acquiesced in actions which presume the existence of such jurisdiction.
- 4). Jurisdiction is such an important matter that it can be raised at any stage even on appeal.”

10. I have carefully perused the ruling of the taxing officer of 19th April, 2023. The primary issue upon which her decision was based on, as she put it in her ruling, was whether or not there was an agreement for fees between the Applicant and the Respondent pursuant to section 45 of the *Advocates Act*. She went ahead to find that there was one.
11. Taxation of costs, be they party and party costs or Advocate-Client costs is a special jurisdiction reserved for the taxing officer by the Advocate (Remuneration) Order. The jurisdiction of the Taxing officer does not however extend to issues that do not concern the taxation, even though they arise in the course of taxation. One such issue as stated in the case of *Abincha & Co. Advocates -versus- Trident Insurance Co. Ltd [2013]* eKLR, was an issue whether there were any costs due to the Advocate that the taxing officer could tax. The Court in the said case was emphatic that, that was an issue that could only be



determined by a Judge. ‘It is the kind of issue that should have been referred to opinion of the High Court’.

12. The Court elaborated that the phrase, ‘any matter in dispute’, in paragraph 13A of the Advocates (Remuneration) Order must be interpreted to mean, ‘any matter connected with or concerning the taxation of any item in the bill of costs.’ It cannot mean any issue that challenges the taxing officer’s jurisdiction to tax the bill of costs.
13. Justice Odunga in the case of Corporate Insurance Ltd –versus- Advocates [2022] KEHC 545 (KLR), affirmed the above position when he held that;

“where an issue arises that does not concern the taxation, the taxing officer lacks the competence to deal with the same and the procedure is to refer the matter to the Judge for determination after which, depending on that determination, the taxing officer may continue with the matter.”

14. The above position was affirmed in Hezekiel Oira T/A Oira Advocate -versus- KBC [2015] eKLR, Mwandumbo & Co. Advocates -vs- Joseph Maina Kimani [2018] eKLR, *Khan & Katitu Advocates -versus- Central Electrical Intern. Ltd [2005]* e KLR and *Mugambi & Co. Advocates -vs- John Okal Ogwanyo & another [2013]* eKLR.
15. The issue whether or not there was a binding and valid agreement for fees in my considered view was outside the special jurisdiction of the taxing officer.
16. I further note that the taxing officer in her ruling expressly found and indeed stated that the issue of Legal Services Contract between the Applicant and the Respondent was an issue of fact that cannot be determined on the basis of a Preliminary objection. She nonetheless and surprisingly went ahead to determine and uphold the preliminary objection as such.
17. From the foregoing, I am satisfied that the taxing officer erred in principle. I proceed to set aside the ruling of 19th April, 2023 and direct that the Advocate-Client Bill of Costs dated 23rd September, 2022 be placed before a different taxing officer for taxation.
18. The costs of the application shall be in the cause.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF JANUARY, 2024

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kichwen h/b for Mr.Khatib for the Respondent

Mr. Bruno for the Advocate/Applicant

