



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC MISC. APP. NO. 16 OF 2013

(CONSOLIDATED WITH MISC. APPLICATION NUMBERS 13, 14, 15, 17, 41 AND 42 OF 2013

KENYARIRI & ASSOCIATE ADVOCATES.....RESPONDENT

=VERSUS=

- 1. SALAMA BEACH HOTEL**
- 2. HANS JURGEN LANGER**
- 3. ZAHRA LANGER**
- 4. STEFFANO UCCELI**
- 5. ISAAC RODROT.....APPLICANTS**

R U L I N G

Introduction:

1. When the second Reference was placed before me in the seven consolidated matters herein, I re-taxed item one of the Client/Advocate Bill of Costs vide my Ruling dated 26th September 2014. I expected the matter to rest there or for either party to file an appeal challenging my Ruling in the Court of Appeal. However, the parties herein had different ideas.
2. The Clients/Applicants have filed a Notice of Motion dated 4th December 2014 in which they are seeking for the following orders: that this court be pleased to review and or set aside the taxing master's decision dated 5th June 2014 with regard to the calculation of the amount of money paid by the client; that this court do review or set aside the certificate of costs issued on 12th November 2014 and that this court to determine all questions relating to the execution, discharge or satisfaction of the costs payable to the Respondents by the Applicants.
3. The Advocate/Respondent has objected to the jurisdiction of this court in entertaining the Clients'/Applicant's Application dated 4th December 2014
4. In his Notice of Preliminary Objection dated 24th January 2015, the Advocate/Respondent averred that there is no competent Reference before this court to cloth it with jurisdiction to hear the current Application; that a party cannot invoke the jurisdiction of the High court as provided for under the Civil Procedure Rules to agitate a complaint in relation to a decision made by a taxing officer and that once a taxing officer has issued a Certificate of Taxation, she becomes *functus officio*.
5. The Advocate finally averred that the issues raised in the current Application are *res judicata* and that the Clients'/Applicants' only recourse is to file an appeal.

6. The parties agreed to dispose off the Preliminary Objection first.
7. In his submissions, the Advocate/Respondent reiterated the averments contained in the Notice of Preliminary Objection which I have summarised above. Counsel also provided to this court authorities which I have considered.
8. On his part, the Clients'/Applicants' counsel submitted that this court has jurisdiction to grant the orders sought because the law provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree.
9. Counsel submitted that the current Application is solely based on my Ruling dated 26th September 2014 in which I held as follow:

“The taxing officer of this court has already determined, on the basis of the documents that were produced by the clients, the amount of money that was paid to the advocate. It might be true that as at the time of taxation, the Applicants/Clients were not in possession of all the documents to prove their claim, but that is water under the bridge, unless an application for review is done and allowed by the taxing officer.”

10. In the said decision, I held that the issue of whether the client has additional documents that were not placed before the taxing officer was “water under the bridge”. The Application for review of the decision of the taxing officer on the grounds that the clients had additional documents which they wanted the taxing officer to consider could only be entertained by the taxing officer herself and before the taxing officer delivered her Ruling and certainly not by this court.
11. Having not presented all the documents before the taxing officer, even after being given an opportunity to do so, the Clients cannot at this stage claim that this court should review and or set aside the Ruling of the taxing officer so as to allow them to produce the same documents in evidence.
12. In fact, when I referred the consolidated Bills of Costs to the taxing officer for re-taxation in my Ruling dated 20th February, 2014, I stated that the taxing officer should direct the production of books, papers and documents to ascertain the claim of both parties.
13. When the matter was referred to me by way of a Reference the second time, I stated as follows:

“ In any event, the Respondents (Clients) produced documents showing how much they had paid to the Applicant, which documents were considered by the taxing officer. The proved amount was deducted from the final taxed Bills of Costs.”

14. In the circumstance, this court does not have jurisdiction under the Advocates Act or the Advocates Remuneration Order to order for a review or setting aside of its own Ruling or the Ruling of the taxing officer after hearing and determining the Reference pursuant to the provisions of Rule 11(2) of the Advocates Remuneration Order.
15. It therefore does not matter, as alleged by the Clients/Applicants, that they have now come across documents showing that indeed the Advocate had been paid his legal fees in full. The provisions of Order 45 of the Civil Procedure Rules are not applicable in this case.
16. In the absence of a competent Reference before this court, I find and hold that I do not have the requisite jurisdiction to entertain an Application for review or setting aside the Certificate of Costs issued on 12th November 2014 or the taxing officer's decision of 5th June 2014.
17. For those reasons, I allow the Advocate's Notice of Preliminary Objection and dismiss the Clients'/Applicants' Application dated 4th December 2014 with costs.

Dated and delivered in Malindi this 17th day of April, 2015.

O. A. Angote

Judge