



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: E. M. GITHINJI, HANNAH OKWENGU &

J. MOHAMMED, J.J.A.)

CIVIL APPEAL NO. 25 OF 2016

BETWEEN

SIMON MARA KHATE.....APPELLANT

AND

ANNET MULAMASI & CO. ADVOCATES.....RESPONDENT

(Appeal from the ruling of the Deputy Registrar, High Court of Kenya

at Bungoma (Yalwala, DR.) dated 25th November, 2015

in

HC. MISC. APPLICATION NO. 125 OF 2014)

JUDGMENT OF THE COURT

[1] Simon Mara Khate, the appellant herein, is aggrieved by the decision and orders made by a Deputy Registrar in Bungoma High Court Miscellaneous Application No. 125 of 2014 on the 25th of November, 2015. The order was made by the Deputy Registrar in his capacity as a taxing officer under the Advocates Remuneration Order following an application made by the respondent for the advocate's client bill of cost in Bungoma HCC No. 74 of 2010; Bungoma HCC No. 8 of 2012 and Kimilili SRMCC No. 73 of 2011 to be taxed by the honourable court and a ruling on 8th July, 2015 assessing the advocate client bill of costs at Kshs.120,370/=, 63,095/= and 20,745/= respectively.

[2] Thereafter, the appellant sought a review of the taxation but the application was dismissed with costs on 5th August, 2015. As a result, the respondent filed a supplementary bill of costs dated 6th August, 2015, in regard to the costs awarded to the respondent on 5th August, 2015, and the Deputy Registrar, taxed the supplementary bill of costs at Kshs.20,745/=.

[3] The appellant has now lodged this appeal challenging the ruling of 25th November, 2015. He is aggrieved by the assessment and contends that the Deputy Registrar conducted the proceedings in a biased manner; ignored the submissions of the appellant and the pleas of the appellant that the respondent concealed information regarding an amount of Kshs.100,000/= that he had received for and on behalf of the appellant in Bungoma HCCC No. 74 of 2010 and HCCC No. 8 of 2012.

[4] In support of his appeal, the appellant reiterated the grounds set out in the memorandum of appeal, and urged the court to set aside the ruling of the Deputy Registrar as he was not accorded justice. He explained that he had made an application to the High Court for review of the order of the Deputy Registrar but instead the same was returned back to the Deputy Registrar who rejected it. The respondent opposed the appeal and urged the court to dismiss it maintaining that the jurisdiction of the Court was not properly invoked, no notice of objection having been presented to the Deputy Registrar, nor was there any evidence that the appellant ever made a reference to a High Court judge against the decision of the Deputy Registrar or sought leave to prefer his appeal to this Court.

[5] We have considered this appeal, the record of appeal and the submissions made before us. The appeal concerns a dispute over taxation of an advocate client's bill by a taxing master. Paragraph 11 of the Advocates Remuneration Order that deals with objections to decisions on

taxation and appeal to this Court states as follows:

- 1. Should any party object to the decision of the Taxing Officer, he may within fourteen days after the decision give notice in writing to the Taxing Officer of the item of taxation to which they object.**
- 2. The Taxing Officer shall forthwith record and forward to the Objector the reasons for this decision on those items and the Objector may within fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons, which shall be served on all parties” concerned setting out the grounds of his objection.**
- 3. Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subparagraph (2), may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal”**

[6] Paragraph 11 is clear on how the appellate jurisdiction of this Court may be invoked in taxation proceedings. In this matter, there is no reference that has been dealt with by a judge of the High Court and therefore the matter is prematurely before us. The decision of the Deputy Registrar can only be challenged by way of a reference to the High Court. Therefore, the appellate jurisdiction of this Court has not been properly invoked.

[7] Secondly, although the memorandum of appeal states that the appellant is aggrieved by the decision made on 25th November, 2015, it is apparent from the prayers indicated in the memorandum that the appellant seeks to set aside the orders relating to payment of cots made in Bungoma HCCC No. 74 of 2010 and HCCC No. 8 of 2012. The bills in regard to these matters were actually taxed on the 8th July, 2015, and an application for review of the taxation dismissed on 5th August, 2015. Thus, the notice of appeal filed on 4th January, 2018, was filed way out of time and is defective as no mention of the earlier orders is made.

[8] For these reasons, we find that this appeal must fail. It is accordingly dismissed with costs.

DATED and delivered at Eldoret this 17th day of January, 2019

E. M. GITHINJI

.....

JUDGE OF APPEAL

HANNAH OKWENGU

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR