



Eduardo Zinna t/a Villa Zuhura v John Bwire & Associates Advocates (Miscellaneous Application E010 of 2025) [2025] KEELRC 2001 (KLR) (8 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2001 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
MISCELLANEOUS APPLICATION E010 OF 2025**

**M MBARŪ, J
JULY 8, 2025**

BETWEEN

EDUARDO ZINNA T/A VILLA ZUHURA APPLICANT

AND

JOHN BWIRE & ASSOCIATES ADVOCATES RESPONDENT

RULING

1. The applicant filed an application dated 25 March 2025 under the provisions of section 89 of the *Civil Procedure Act*, Rule 11 of the Advocates (Remuneration) Order and Schedule 7 of the Advocates Remuneration Order seeking orders,
 1. The Court be pleased to dismiss, vary and/or set aside the ruling of the Deputy Registrar, Hon. Nancy Makau delivered on 11 March 2025 in Malindi HCCCMISC/E179/24 John Bwire & Associates v Eduardo Zinna t/a Villa Zuhura.
 2. The court be pleased to order that the Advocate-Client Bill of costs dated 14 June 2024 be placed before another taxing officer for taxation.
 3. Costs of the application be provided for.
2. Eduardo Zinna supports the application through the affidavit and avers that on 11 March 2025, the Hon. Nancy Makau delivered a ruling on the bill of costs in Malindi HCCCMISC/E179/24 John Bwire & Associates v Eduardo Zinna t/a Villa Zuhura. The bill of costs arose from Malindi CMCC ELRC No. 65 of 2019, Dennis Eshirere Njoroge v Eduardo Zinna t/a Villa Zuhura.
3. The taxing master taxed the cost bill at Ksh. 192,980, a decision that was wrong because the taxing master did not use judicial discretion. The taxing master, sitting as the High Court Deputy Registrar, taxed a matter arising out of employment and labour relations, had no jurisdiction, and failed to account for the evidence submitted.



4. The respondent has commenced execution proceedings; hence, the applicant will suffer irreparable loss and damage unless the application is allowed.
5. The respondent filed Grounds of Opposition and avers that the instant application is bad in law and offends paragraph 11 of the Advocates Remuneration Order (ARO). There is no sufficient cause demonstrated for the grant of the orders sought. The issue of jurisdiction was not contentious before the Deputy Registrar and cannot be raised in the reference. In its nature, the reference is an appeal, and the Employment and Labour Relations Court, determining a reference, cannot entertain a matter not raised before the Deputy Registrar.
6. The applicant wants to remit the Advocate-Client Bill of costs for relaxation, which amounts to forum shopping and implicitly casts aspersions on the taxing officer without justification. The application should be dismissed with costs.
7. Parties filed skeleton written submissions and attended for oral highlights.
8. Principally, the question of jurisdiction on the Deputy Registrar sitting as the taxing officer in a bill of costs arising from an employment and labour relations dispute came to the fore. The respondent asserts that the question of jurisdiction was not an issue and hence cannot be raised at this point, which is an appeal. However, the issue of jurisdiction can be raised at any stage, including on appeal, as held in *Floriculture International Ltd v Central Kenya Ltd and 3 Others* (1995) eKLR.
9. The principle was reiterated by the Court of Appeal in *Kenya Ports Authority vs Modern Holding [EA] Limited* [2017] eKLR, where it held that;

We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva voce, and indeed, even by the court itself, provided that where the court raises it suo motu, parties are to be accorded the opportunity to be heard. The 2nd Respondent's case is that this matter ought to have been handled by the Co-operative Tribunal.
10. In this case, the applicant asserts that the advocate-client bill of costs ought to have been addressed by the Deputy Registrar responsible for employment and labour relations and not the High Court Deputy Registrar. The issue is that the Deputy Registrar who heard the bill of costs and delivered a ruling on 11 March 2024 had no jurisdiction.
11. As the adage goes, jurisdiction is everything. Without it, the court must stop. See *Kamau v Karanja & another* (Petition E005 of 2024) [2024] KESC and the case of *Lillian S" v Caltex Kenya Limited* (1989) KLR 1 and the emphasis that;

I think that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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 a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction ...
12. Hence, one should not wait until after the ruling to raise the question of jurisdiction. Such a matter should be addressed immediately to avoid wasting crucial judicial time and resources.



13. In this regard, it is not in dispute that the matter arose from proceedings in Malindi CMCC ELRC No. 65 of 2019, Dennis Eshirere Njoroge v Eduardo Zinna t/a Villa Zuhura. Upon which, the respondent raised the Advocate-Client Bill of Costs dated 14 June 2024.
14. This is not a party and party bill of costs, which ordinarily should be addressed under the subject file.
15. The applicant filed the Advocate/Client Bill of Costs through a miscellaneous application. The taxing master or officer responsible for the court should conduct the taxation of a bill of costs. In this regard, under the Advocates Remuneration Order, an Advocate/Client Bill of Costs should be taxed by the taxing officer at the High Court, as held in Tieno, Ragot & Company Advocates v Kenya Airports Authority [2021] KECA 587 (KLR).

Indeed, the formula for taxing an advocate and client bill of costs for work done in the High Court is provided for in Part B of Schedule VI of the Order. But the phrase “fees prescribed in A above increased by one-half” in part B of Schedule VI, does not necessarily mean the fees as taxed in a Party and Party Bill. ...

16. This would have been different where the matter related to a party and a party's bill of costs. The Employment and Labour Relations Court, being a distinct and separate court from other superior courts as defined under Article 162(2)(a) of *the Constitution* and constituted under the *Employment and Labour Relations Court Act*, has the exclusive jurisdiction to hear and determine employment and labour relations disputes and for connected purposes.
17. Under the *Employment and Labour Relations Court Act*, the court is administratively resourced with a Registrar who is separate and distinct from other registrars of the superior court. The Registrar of the court is required under section 11(2) of the Act to,
 - (2) The Registrar, the Senior Deputy Registrars, the Deputy Registrars, the Assistant Registrars and other officers of the Court shall exercise such powers and perform such duties as may be conferred upon them by this Act, the rule of the Court or any other written law.
18. The office of the court's Registrar is the repository of all court records, including court files. Under the office, designated deputy registrars have the power to perform such duties as are conferred under the Act, including taxing bills of costs.
19. In this regard, the subject bill of costs resulting from the Advocates Remuneration Order for Advocate/Client was addressed by a competent Deputy Registrar. The Deputy Registrar has the requisite jurisdiction to hear the taxation and apply discretion judicially.
20. The application dated 25 March 2025 is without merit. The Advocate-Client Bill of Costs dated 14 June 2024, arising from proceedings in Malindi CMCC ELRC No. 65 of 2019, Dennis Eshirere Njoroge v Eduardo Zinna t/a Villa Zuhura, is appropriately determined by the Deputy Registrar. The application is dismissed.
21. For this application, each party shall bear its costs.

DELIVERED IN OPEN COURT AT MALINDI, THIS 8 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:



Court Assistant: Davis Wekesa

