



REPUBLIC OF KENYA



KENYA LAW
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Kemboy Law Advocates v Narok County Government (Miscellaneous Application E028 of 2023) [2024] KEELRC 4 (KLR) (23 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 4 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION E028 OF 2023
HS WASILWA, J
JANUARY 23, 2024**

BETWEEN

KEMBOY LAW ADVOCATES ADVOCATE

AND

NAROK COUNTY GOVERNMENT RESPONDENT

(ELRC CAUSE NO. 8 OF 2022)

RULING

1. This Ruling is in respect of the Advocate/Applicant's Chamber Summons dated 6th October, 2023, filed pursuant to Paragraphs 11(2), 12 and 13 of the Advocates (Remuneration) Order, 2009, seeking for the following Orders; -
 1. Spent.
 2. Spent.
 3. That the Honourable Court be pleased to review and discharge the decision of the Taxing Officer, Hon. Margaret Kyalo, issued on 3rd October, 2023 transferring this matter to come up on 18th October, 2023 before the Hon. Lady Justice Hellen Wasilwa for the hearing and determination of the Client/Respondent's Notice of Preliminary Objection dated 25th July, 2023.
 4. THAT this Honourable Court be pleased to issue appropriate directions for the hearing and determination of the Client/Respondent's Notice of Preliminary Objection dated 25th July, 2023 to wit, that the Taxing Officer hear and determine the same at first instance in exercise of her original jurisdiction as provided under paragraph 13 of the Advocate (Remuneration) Order, 2009.



5. That the costs of this Reference be awarded to the Advocate/Applicant.
2. The Applicant stated that it commenced these proceedings on 9th June, 2023 when it filed its Advocate-Client Bill of Costs dated 5th June, 2023. Thereafter, the Taxation Notice was signed by the Deputy Registrar on 12th June, 2023 and thus this matter was scheduled to come up for Taxation on 4 July, 2023.
3. That the Client/Respondent was served with the said Bill of Costs on 14th June, 2023 as evidenced by the affidavit of service on record and on the said 4th July, 2023, this matter came up in Court together with a series of other matters, namely: Nakuru ELRC Miscellaneous Application Nos. E029 of 2023, E30 of 2023, E31 of 2023, E32 of 2023 and E33 of 2023.
4. On that day, notwithstanding the Client/Respondent's absence, the Advocate/Applicant confirmed that it had served the various Bills of Costs in all of the said files including in this matter along with the Taxation Notices on 14th June, 2023 upon the Client/Respondent and duly filed Affidavits of Service, which were on record to account for service in each file including in this matter.
5. Despite service, the Applicant informed the Court that they were yet to receive any response. In the circumstances, the Advocate/Applicant requested the Taxing Officer to proceed to tax the Bills as they were and sought for a Ruling date. In the circumstances, the Taxing officer scheduled all the said matters including this one for Ruling on 26th September, 2023.
6. That at the tail end of the proceedings of 4th July, 2023, while confirming if all the above-mentioned files had been brought to her attention, the Taxing Officer confirmed that the file for this matter had been inadvertently not brought to her. In the circumstances, she directed her Clerk to trace it and have it brought to her chambers for purposes of recording the above proceedings and for preparation of the Ruling.
7. The Applicant states that it was however shocked when on 15th August, 2023, it was served by the Client's Advocates on record with a Mention Notice dated 11th August, 2023 indicating that this matter would come up for Mention on 3rd October, 2023.
8. He states that this Notice forced him to peruse the Court file and to his consternation, the Advocate found out that the Court record in this matter reflects that when this matter came up for Taxation on 4th July, 2023, no party was present. As a result, the Taxing Officer directed that a Mention Notice do issue to be served on all parties and that the matter be scheduled to come up for Mention on 8th August, 2023.
9. On 10th July, 2023, the firm of Maina Ngaruiya & Company Advocates filed the Notice of Appointment dated 7th July, 2023 on the Client/Respondent's behalf and on 27th July, 2023, they filed the Notice of Preliminary Objection (P.O) dated 25th July, 2023 on the Client/Respondent's behalf which P.O advances the following Objections to the Taxation of the Advocate's Bill of Costs:

“TAKE NOTICE that the Client/Respondent herein shall raise a Preliminary Objection to have the Advocate/Applicant's Bill of Costs dated 5th June, 2023 struck out with costs on the following grounds:

THAT this Honourable Court lacks the requisite jurisdiction to hear and determine the instant matter in view of the provisions of section 4 and section 6 of the *Arbitration Act*, 1995. The same bringing in a jurisdictional question for immediate determination going by the provisions of section 10 of the *Arbitration Act*, 1995. THAT the Advocate/Applicant's Bill of Costs dated 5th June, 2023 is an abuse



of the Court process, bad in law incapable of being entertained by the Court at this point since the Applicant has infringed the exhaustion doctrine that is contemplated under Article 159 (2) (c) of *the Constitution* of Kenya, 2010.”

10. It is started further that this matter came up for Mention on 8th August, 2023 when in the presence of the Client/Respondent’s Advocates only, the Taxing Officer directed that this file be transferred to a Judge for Hearing and determination of the said Client/Respondent’s P.O and further that it be scheduled to come up for Mention on 3rd October, 2023.
11. He contends that the above turn of events is at odds with the Directions issued on 4th July, 2023 by the Taxing Officer and adverse directions given in the matter without its participation.
12. He states that he was served with the Notice of Appointment and P.O on 11th July, 2023 and 28th July, 2023 respectively, at no point where it ever served with a Mention Notice that this matter would come up on 8th August, 2023.
13. He contends that the directions to transfer this matter to a Judge for the hearing and determination of the Client/Respondent’s P.O is not only unprocedural but also not founded on any law, policy or practice directions. It is an exercise in futility that will only delay taxation. This is because pursuant to Paragraphs 11, 12 and 13A of the Principal Advocates (Remuneration) Order, 2009, a taxing officer, is clothed with jurisdiction to tax either a party/party or an Advocate-Client Bill of Costs and a Judge’s jurisdiction may only be invoked by any party who is aggrieved with the decision of the taxing master on the taxation or any other matter therein by filing of a reference under paragraph 11 of the Advocates (Remuneration) Order and under the provisions of paragraph 12 where the parties by consent have agreed that a matter arising from the taxation of a bill of costs be referred for the Judge’s opinion.
14. It stated further that a Judge can entertain any application or P.O to strike out a duly filed Bill of Costs at first instance where an advocate files a suit for recovery of costs due to him as per section 48 of the *Advocates Act* and even so, save for where there is an agreement on fees in place, if the Client in his/her defence to such a suit challenges the quantum of the costs sought, the Judge cannot enter judgement, unless with the parties’ consent, until the costs are taxed and certified by the taxing master, as provided for under section 49(a) of the *Advocates Act*.
15. In light of the foregoing and being that the Judge’s jurisdiction is limited to the scenarios set out above, the contention that a Taxing Officer is limited to only taxing bills of costs hence cannot not handle an application or P.O challenging the competency of the Advocate’s instant Bill of Costs does not hold water, particularly in regard to paragraph 13A of the Advocates (Remuneration) Order, 2009 .This position is fortified by the Court of Appeal decisions in *Sharma v Uhuru Highway Development Ltd* [2001] 2 EA 531, *Otieno Ragot & Company Advocates vy Kenya Airports Authority* [2015] eKLR and *C.B. Gor & Gor v Oriental Commercial Bank Limited (formerly known as Delphis Bank Limited)* [2018] eKLR.
16. That a similar position was upheld by the High Court in the following cases: *Hezekiah W. Gichohi v Uhuru Highway Development & Others* [2011] eKLR, *Stanley Mwandoe Righa v Braimoh Joseph Mburu* [2014] eKLR and *Tom Ojienda & Associates vy Mumias Sugar Company Limited & another* [2018] eKLR.
17. The Applicant stated that it was dissatisfied with the manner in which the Taxing Officer had proceeded with the matter and transfer this matter to a Judge, and wrote the letter dated 15th August, 2023 addressed to the Taxing Officer and copied to the Presiding Judge of this Court as well as the Client’s Advocate on record but the letter has not elicited any response to date.



18. He stated that it is the inaction, on the part of the taxing master that has forced the Applicant herein to file the instant Application to set aside the Taxing Officer's said directions as they are not only illegal, unprocedural, unreasonable, null and void as they are not anchored in law, policy or Court practice. He added that proper direction is crucial because he is apprehensive that the Taxing Officer will similarly transfer Nakuru ELRC Miscellaneous Application Nos. E029 of 2023, E30 of 2023, E31 of 2023, E32 of 2023 and E33 of 2023 to this Honourable Court because in these matters the Client has equally filed similar P.O s as the one in the instant matter.
19. The Applicant urged this Court to set aside the Taxing Officer's decision of 3rd October, 2023 and proceed to urgently give appropriate directions for the hearing and determination of the Client/ Respondent's Notice of Preliminary Objection dated 25th July, 2023, because the Taxing Officer has original jurisdiction as provided under paragraph 13 of the Advocates (Remuneration) Order, 2009.
20. This Application is further supported by the Affidavit of Julius, K Kemboi, senior partner at the Applicant's firm, deposed upon on the 6th October, 2023, reiterating the grounds of the Application.
21. The Application is opposed by the Respondent who filed a replying affidavit deposed upon on the 27th October, 2023 by John Mayiani Tuya, the County Secretary.
22. In the Replying affidavit the deponent stated that the Applicant filed its Bill of Costs dated the 5th June, 2023 seeking costs to the tune of Kenya Shillings One Hundred and Seventy-Four Million, Two hundred and Forty-Eight Thousand, Two Hundred and Thirty-Eight and Seventy Cents (Kshs. 174, 248, 238. 70).
23. That these Bill of Costs were filed alongside other matters which included Nakuru ELRC Miscellaneous Application Nos. E029 of 2023, E30 of 2023, E31 of 2023, E32 of 2023 and E33 of 2023. However, that despite being served with the Bill of Costs Applications, the same had not reflected on the Judiciary Portal prompting them to send their advocates to confirm the Position of the matters.
24. He stated that, their advocate's representative informed them that Nakuru ELRC MISC. APPL No. E028 of 2023 to ELRC MISC No. E033 had been scheduled for a mention on the 8th August 2023, however upon checking in the Portal, it was indicated that the matters were scheduled for Ruling to their shock and contrary to the information received from the Court.
25. This confusion, prompted them to write a letter to the Deputy registrar for an explanation on the anomaly. Before this letter could be responded to, their advocates appeared in Court on the 8th August 2023 as scheduled and on that day only ELRC MISC E028 of 2023 had been scheduled for mention and the rest were not cause listed.
26. Hon Margaret Kyalo (DR), noting that the Respondent had filed a Preliminary Objection dated 25 July, 2023 directed that the file be transferred to the Judge for Hearing and determination citing and correctly so, that she lacks the requisite Jurisdiction to entertain the Preliminary Objection. These directions prompted the filling of the current application.
27. It is averred that contrary to the Applicant's assertions of the limits of a Judge's jurisdiction in handling taxation matter, the affiant stated that this Court has unlimited original jurisdiction to determine all matter and issue directions it deems fit.
28. He added that a Taxing Officer is clothed with Jurisdiction to hear and determine matters of taxation of Bills of Costs and any other matter arising not connected to the principal duty of a taxing officer must be referred to a Judge for determination first before taxation proceeds.



29. In the circumstances, the Respondent urged this Court to make a determination that the decision of the taxing master, referring this matter to this Court was anchored in law and was equally procedural as she lacks jurisdiction to entertain the Preliminary Objection and thus dismiss the Application herein with costs.
30. The Application herein was canvassed by written submission with the Applicant filing on the 9th October, 2023 and the Respondent filed on 30th October 2023.

Applicant's Submissions.

31. The Applicant submitted that the assertion held by the Taxing Officer, Hon. Margaret Kyalo (DR), that her jurisdiction as a taxing master is solely limited to tax bills of costs, and that she cannot address an application or Preliminary Objection (P.O) challenging the competence of the Advocate's instant Bill of Costs, lacks merit. He argued that Pursuant to Paragraphs 11, 12 and 13A of the Principal Advocates (Remuneration) Order, 2009, it is common ground that a taxing officer is clothed with jurisdiction to tax either a party/party or an Advocate-Client Bill of Costs and a Judge's jurisdiction, in such proceedings, may only be invoked by a party who is aggrieved with the decision of the taxing master on the taxation or any other matter therein by filing of a reference under paragraph 11 of the Advocates (Remuneration) Order.
32. He added that the Judge's jurisdiction can also be invoked under the provisions of paragraph 12 where the parties by consent have agreed that a matter arising from the taxation of a bill of costs be referred for the Judge's opinion. Further that another avenue for which a Judge can entertain an application or P.O to strike out a duly filed Bill of Costs at first instance is where an advocate files a suit for recovery of costs due to him as provided for under section 48 of the Advocates Act and even so, save for where there is an agreement on fees in place, if the Client in his/her defence to such a suit challenges the quantum of the costs sought, the Judge cannot enter judgment, unless with the parties consent, until the costs are taxed and certified by the taxing master as stipulated under section 49(a) of the Advocates Act.
33. In light of the foregoing, it was submitted that it is trite that a Judge's jurisdiction with respect to taxation of bills of cost is limited to the scenarios set out above and the contention that a Taxing Officer is limited to only taxing bills of costs hence cannot not handle an application or P.O challenging the competency of the Advocate's instant Bill of Costs does not hold water particular in light of paragraph 13A of the Advocates (Remuneration) Order, 2009 which stipulates that:

“For the purposes of any proceedings before me, the taxing officer shall have 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.”
34. Based on the quoted section, the Applicant submitted that the taxing master who is charged with the duty of taxing bills of costs must also have the power to determine an objection as to the competency of the bill. In this, they relied on the case of *Sharma v Uhuru Highway Development Ltd* [2001] 2 EA 531, where the Court of Appeal held that:-

“Where the advocate's bills of costs had been scheduled for taxation before the taxing master, the High Court had no jurisdiction in such circumstances to entertain an application for stay of the said taxation. In entertaining the said application, the proceedings before the High Court were a nullity because there were no grounds conferring jurisdiction on the



learned Judge to hear the matter and no steps had been taken to divest the taxing master of his jurisdiction.”

35. Similarly, that this position was further re-iterated in *Otieno, Ragot & Company Advocates v Kenya Airports Authority* [2015] eKLR, where the Court of Appeal enunciated that —

“In proceedings in the High Court, a bill of costs is taxable under Schedule VI, which provides the basis for the taxing officer to assess costs. To enable the taxing officer carry out the assessment or taxation of costs, he is empowered under Paragraph 13A to summon and examine witnesses, direct the production of documents and to “adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.” Those are powers that the taxing officer can call to his aid where for instance there is a dispute, as is the case here, regarding “the value of the subject matter. Under paragraph 11 of The Advocates (Remuneration) Order, the procedure for objecting to a decision of the taxing officer is provided for by recourse to the High Court by way of a reference to a judge by chamber summons. The decision of the judge on such objection is appealable, with the leave of the judge to the Court of Appeal. Under Paragraph 12 of the Order, the parties to the taxation may by consent refer any matter in dispute arising out of the taxation of a bill of costs for the opinion of the High Court. Therefore in addition to providing the taxing master with the parameters and tools for carrying out taxation of costs, the Advocates (Remuneration) Order contains an comprehensive process for any party aggrieved by a decision of the taxing officer to object to it before a judge and, as we have seen, further recourse to the Court of Appeal with the leave of the judge. Ringera, J (as he then was) in the Matter of Winding Up of Leisure Lodges Limited, Winding Up Cause No. 28 of 1996 expressed the opinion, correctly in our view, that a party aggrieved by a decision of a taxing officer “whether it be on the quantum awarded on the bill as a whole or any items thereof or on the validity of the bill as a whole or any items thereof” has recourse to the High Court by way of reference under Paragraph 11 of the Advocates (Remuneration) Order and that that Order is a complete code. In the case of *Sharma vs. Uhuru Highway Development Ltd* [2001] 2 EA 531 whose facts bears striking similarity with this matter, an advocate after rendering services to his client forwarded a fee note to his client. It was not paid. The advocate commenced a miscellaneous civil suit in the High Court submitting his itemized advocate/client bill of costs for taxation. The taxation was then scheduled before the taxing officer. Before the taxation was done, the client applied to the High Court for stay of the taxation and for the striking out of the Miscellaneous Cause. When the matter reached this Court, it was held that the proceedings before the High Court were a nullity as the matter had already been fixed for taxation before the Deputy Registrar and there were no grounds conferring jurisdiction on the judge to hear the matter and no steps had been taken to divest the Deputy Registrar of his jurisdiction. This Court was clear that in those circumstance the High Court did not have jurisdiction to entertain the application for stay... We consider that the learned Judge misdirected herself by holding that the suits before her were “not about taxation of the pending bill(s)”. Those suits are undoubtedly premised on the complaint by the respondent that the appellant’s claim for fees is based on “total disregard of the instructions carried out and the value of the work done”; and that the appellant is “estopped from claiming any fees based on the monetary sum pleaded in the original suit”. In those suits, the respondent also complained that the appellant had gone ahead to file taxation proceedings based on with invalid and unenforceable subject value when the appellant is only entitled to remuneration based on actual work done. In our view, those were matters for determination by taxing officer in the first instance before any party aggrieved by the



determination of the taxing officer, can escalate them to the High Court. Consequently, we are persuaded that the decision of the High Court to stop the taxation in the circumstance of this case was clearly wrong so as to invite our intervention. We allow the appeals and set aside the rulings and orders of the High Court given on 30th June 2011 allowing the respondent's applications dated 12th May 2011. We substitute therewith orders dismissing the applications with costs to the appellant. The appellant will also have the costs of these appeals."

36. Additionally, that the holding in the above decision was subsequently reiterated in the Court of Appeal decision in *C.B. Gor & Gor v Oriental Commercial Bank Limited* (formerly known as *Delphis Bank Limited*) [2018] eKLR which the Learned Judges of Appeal (Alnashir Visram, W. Karanja and Martha K. Koome, JJ.A) held as follows:

"Accordingly, the learned Judge acted without jurisdiction in as far as she went on to consider the application challenging the bills of costs which had been by then scheduled for hearing before the taxing master. Such an application, in our view should have been dealt with by the taxing master in the first instance before escalating to the High Court. See *Otieno Ragot & Company Advocates v Kenya Airports Authority* (supra). Furthermore, this Court in the case of *Sharma vs. Uhuru Highway Development Ltd* [2001] 2 EA 531 held that where the advocate's bills of costs had been scheduled for taxation before the taxing master, the High Court had no jurisdiction in such circumstances to entertain an application for stay of the said taxation. In entertaining the said application, the proceedings before the High Court were a nullity because there were no grounds conferring jurisdiction on the learned Judge to hear the matter and no steps had been taken to divest the taxing master of his jurisdiction. We think we have said enough to demonstrate that the learned Judge acted without jurisdiction. Having expressed ourselves as herein above, we see no reason to delve into the issue of whether the bills of costs were time barred. Consequently, we allow the appeal and set aside the ruling dated 29th September, 2016 and substitute the same with an order striking out the respondent's application dated 8th April, 2016 with costs. The appellant shall also have costs of this appeal."

37. Accordingly, that the taxing master is the one that is clothed with jurisdiction to determine the P.O and thus this Court should direct the same to be heard and determined by the taxing master.
38. The Applicant further buttress its arguments by referring this Court to the case of *Hezekiah W Gichohi V Uhuru Highway Development & Others* [2011] eKLR, the case of *Stanley Mwandoe Righa V Braimoh Joseph Mburu*[2-14] eKLR and the case of *Tom Ojienda & Associates V Mumias Sugar Company Limited & Another*[2018] eKLR.
39. In conclusion, the Applicant submitted that it is on the premise of the above arguments that it urges this Court to exercise its discretion to remand the case back to the Deputy Registrar, emphasizing the Deputy Registrar's specialized jurisdiction and expertise in matters of taxation and for the hearing and determination of the Preliminary Objection.

Respondent's Submissions.

40. The Respondent submitted on three issues; whether this Honourable Court has Jurisdiction to hear and Determine the Respondents Preliminary Objection dated 25th July, 2023, whether the Deputy Registrar has Jurisdiction to entertain a Preliminary objection and whether the transfer of this matter to this Court will delay taxation.



41. On the first issue, it was argued that as per section 12 of the the [Employment and Labour Relations Court Act](#), this Court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of [the Constitution](#) and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations. As such that the Court is capable of handling any matter before it for hearing and Determination.
42. On the second issue, it was submitted that a Taxing Officer is clothed with Jurisdiction to hear and determine matters of taxation of Bills of Costs and any other matter arising therefrom not connected to the principal duty of a taxing officer must be referred to a Judge for determination first before taxation proceeds. He argued that under Rule 10 of the Advocates (Remuneration) Order, a Registrar or a Deputy Registrar of the High Court is a taxing officer for purposes of taxation of bills under the Advocates Remuneration Order thus lacks the capacity to entertain any other matter before him or her. To support this Position, the Respondent relied on the case of Daphne Musyoki Mwose Kitele Vs O. N Makau & Mulei Advocates & 2 others[2022] eklr where the Court held that: -
- “... the law and practice is that where the jurisdiction of the Taxing Officer is challenged, the matter ought to be referred to the Judge since the mandate of the Taxing Officer is limited to taxation”.
43. He also relied on the case of Nyamongo & Nyamongo ADVOCATES V Pan African Insurance Company Limited and Another [2016] eklr where the Court held that the jurisdiction of the DR is described as ‘special’ because under Section 2 of the [Advocates Act](#), a ‘court’ is defined to mean the High Court and under Rule 49 of the ARO, a court is defined to mean the High Court or any judge thereof or a resident Magistrate Court or any magistrate sitting as a member of a resident Magistrate Court.
44. Accordingly, that a taxing officer cannot be treated as a court within the meaning of the provisions, consequently. Anything that is ordinarily done by a ‘court’ cannot be done by a taxing officer. He added that a taxing officer having been clothed with the Jurisdiction to entertain taxation matters cannot and does not have capacity to handle preliminary objection.
45. It was argued further that Paragraph 13A is clear as to the Jurisdiction of a Taxing Officer. The said paragraph states as follows; -
- “For the purpose of any proceeding before him, the taxing officer shall have 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”.
46. These provisions were put to proper perspective in Abincha & Co, Advocates v Trident Insurance Co. Ltd [2013] Eklr, where the Court held that ‘determination of any matter in dispute before ‘him’ means that the taxing officer has power only to deal with matters in connection with taxation of the bill of costs before him.
47. On whether the transfer of this matter to this Court will delay taxation, it was submitted that courts are guided by the Principles stipulated under Article 159 of [the Constitution](#) of Kenya, hence the Applicant will not suffer any prejudice at all.
48. In conclusion, the Respondent prayed for the Application dated 6th October 2023 be dismissed with costs.
49. I have examined the averments and submissions of the parties herein.



50. The main contention of this application is the preliminary objection raised by the applicants here that the order of the taxing mistress transferring the hearing of the preliminary objection for determination to this court lacks merit and should be reviewed.

51. In determining this application, I will refer to the provision of the Advocates Act Section 49 (a) which states as follows;

“49. Procedure in action where quantum of costs is challenged by defence

Where, in the absence of an agreement for remuneration made by virtue of section 45, a suit has been brought by an advocate for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof—

a. no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;”

52. Indeed under this provision, a Judge can seize jurisdiction in a taxation matter only where parties consent to it.

53. Further paragraph 13A of the Advocates (Remuneration) Order 2009 stipulates as follows;

“ 13A. Powers of taxing officer

For the purpose of any proceeding before him, the taxing officer shall have 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.”

54. My understanding of the provision of law is that the taxing master or mistress has immense powers including powers to summon and examine witnesses and even adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him or her. (Emphasis is mine)

55. The issue of determining any matter in dispute before him/her extends to hearing any application such as the preliminary objection before him/her.

56. In analyzing the jurisdiction of the High Court vis a vis the taxing master the Court of Appeal in *Sharma VS Uhuru Highway Development Ltd* (2001) 2 EA 531 held as follows;

“Where the advocate's bills of costs had been scheduled for taxation before the taxing master, the High Court had no jurisdiction in such circumstances to entertain an application for stay of the said taxation. In entertaining the said application, the proceedings before the High Court were a nullity because there were no grounds conferring jurisdiction on the learned Judge to hear the matter and no steps had been taken to divest the taxing master of his jurisdiction.” [Emphasis added].

57. This position was further reiterated in *Otieno Ragot & Co. Advocates Vs Kenya Airports Authority* (2021) eKLR where the court held as follows:-

“26. In proceedings in the High Court, a bill of costs is taxable under Schedule VI, which provides the basis for the taxing officer to assess costs. To enable the taxing officer to carry out the assessment or taxation of costs, he is empowered under Paragraph 13A to summon and examine witnesses, direct



the production of documents and to adopt all such other proceedings as may be necessary for the determination of any matter in dispute before him.

27. Under paragraph 11 of The Advocates (Remuneration) Order, the procedure for objecting to a decision of the taxing officer is provided for by recourse to the High Court by way of a reference to a judge by chamber summons. The decision of the judge on such objection is appealable, with the leave of the judge to the Court of Appeal, Under Paragraph 12 of the Order, the parties to the taxation may by consent refer any matter in dispute arising out of the taxation of a bill of costs for the opinion of the High Court. Therefore, in addition to providing the taxing master with the parameters and tools for carrying out taxation of costs, the Advocates (Remuneration) Order contains a comprehensive process for any party aggrieved by a decision of the taxing officer to object to it before a judge and, as we have seen, further recourse to the Court of Appeal with the leave of the judge.
28. Ringera, J's (as he then was) in the Matter of Winding Up of Leisure Lodges Limited, Winding Up Cause No. 28 of 1996 expressed the opinion, correctly in our view that a party aggrieved by a decision of a taxing officer whether it be on the quantum awarded on the bill as a whole or any items thereof or on the validity of the bill as a whole or any items thereof has recourse to the High Court by way of reference under Paragraph 11 of the Advocates (Remuneration) Order and that that Order is a complete code.
29. In the case of Sharma Uhuru Highway Development Ltd [2001] 2 EA 531 whose facts bears striking similarity with this matter, an advocate after rendering services to his client forwarded a fee note to his client. It was not paid. The advocate commenced a miscellaneous civil suit in the High Court submitting his itemized advocate/client bill of costs for taxation. The taxation was then scheduled before the taxing officer. Before the taxation was done, the client applied to the High Court for stay of the taxation and for the striking out of the Miscellaneous Cause, When the matter reached the Court of Appeal, it was held that the proceedings before the High Court were a nullity as the matter had already been fixed for taxation before the Deputy Registrar and there were no grounds conferring jurisdiction on the judge to hear the matter and no steps had been taken to divest the Deputy Registrar of his jurisdiction. The Court of Appeal was clear that in those circumstance the High Court did not have jurisdiction to entertain the application for stay.

58. Having considered this position of the law, I find that indeed the taxing mistresses erred by making directions referring the application before this court.
59. It is my finding that the taxing mistress has jurisdiction to handle any application before her and this court lacks the requisite jurisdiction to handle the preliminary objection.
60. The preliminary objection is thus referred back the DR for further directions.
61. Costs in the cause.

Ruling delivered virtually this 23RD day of JANUARY, 2024.

HON. LADY JUSTICE HELLEN WASILWA



JUDGE

In the presence of:-

Leona holding brief for Maina Ngaruiya for 3rd Respondent

Kemboy for Applicant – absent

Court Assistant – Fred

