



P Sang & Company Advocates v Kigen (Miscellaneous Application E003 of 2024) [2024] KEELC 7106 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELC 7106 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
MISCELLANEOUS APPLICATION E003 OF 2024
EM WASHE, J
SEPTEMBER 19, 2024
IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA
AND
IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER, 2014
AND
IN THE MATTER OF A REFERENCE FROM THE RULING OF
THE DEPUTY REGISTRAR/TAXING OFFICER OF THE
ENVIRONMENT & LAND COURT AT KILGORIS
BETWEEN
P SANG & COMPANY ADVOCATES APPLICANT
AND
JUSTUS KIGEN RESPONDENT

RULING

1. The Applicant herein filed a Chamber Summons Application dated 06.05.2024 (hereinafter referred to as “the present Application”) seeking for the following Orders; -
 - a. That this Honourable Court be pleased to set-aside the Ruling made by the Deputy Registrar/ Taxing Master on the 25th of April 2024.
 - b. That this Honourable Court be pleased to refer the Bill of Costs dated 19th February 2024 back for taxation under a different Taxing Officer with appropriate directions.
 - c. That any other orders this Honourable Court deems fit to grant in the circumstances.



- d. That the costs of this Reference be provided for.
2. The grounds in support of the prayers above are outlined in the body of the present application as well as the supporting affidavit sworn by Advocate Rogers Mugumya on the 06.05.2024 and can be summarised as follows; -
 - a. The Deputy Registrar/Taxing Master herein delivered a Ruling on the 25.04.2024 upholding the Respondent's Preliminary Objection dated 12.03.2024.
 - b. However, the Deputy Registrar/Taxing Master did not have the jurisdiction to hear and determine the Preliminary Objection.
 - c. According to the Applicant, the Deputy Registrar/Taxing Officer was procedurally required to place the said Preliminary Objection dated 12.03.2024 before the Judge as contemplated in Paragraph 12 of the Advocates (Remuneration) Order.
 - d. The Applicant pleaded that the Deputy Registrar/Taxing Officer does not have any other powers other than to tax the Bill of Costs presented before him and any other dispute should be referred to the Judge for determination.
 - e. In essence therefore, the Deputy Registrar/Taxing Officer erred and/or acted in excess of his statutory powers and/or jurisdiction by hearing and determining the Preliminary Objection dated 12.03.2024 whose Ruling pronounced on the 25.04.2024 dismissed the Bill of Costs dated 19.02.2024.
 3. The present Application was duly served on the Respondent who opposed the same by filing Grounds of Opposition dated 31.05.2024 premised on various grounds amongst the following; -
 - a. The Respondent stated that the present Application or Reference was incurably defective and without any legal basis.
 - b. The Respondent further pleaded that the Deputy Registrar/Taxing Officer had jurisdiction to hear and determine the Preliminary Objection dated 12.03.2024 which had been raised against the Bill of Cost dated 19.02.2024.
 - c. The present Application lacked merit and should be dismissed with costs as the same was frivolous and vexatious.
 4. Once the Grounds of Opposition dated 31.05.2024 were served on the Applicant, parties were directed to prepare, file and serve their submissions.
 5. The Applicant duly filed his submissions dated 11.06.2024 while the Respondent filed his submissions dated 24.06.2024.
 6. The Court has indeed perused the present Application, the Grounds of Opposition and the submissions by the parties herein and the issues for determination are as follows; -
 1. Issue No. 1- Whether Or Not The Deputy Registrar/taxing Master Had Jurisdiction To Hear & Determine A Preliminary Objection In Taxation Proceedings?
 2. Issue No. 2- Did The Deputy Registrar/taxing Officer Err In Striking Out The Bill Of Costs Dated 19.02.2024?
 3. Issue No. 3- Is The Applicant Entitled To The Prayers Sought In The Present Application?
 4. Issue No. 4- Who Should Bear The Costs Of The Present Application?



7. Based on the above issues for determination, the Court will now proceed to discuss and determine the same as provided herein below.

Issue No. 1- Whether Or Not The Deputy Registrar/taxing Master Had Jurisdiction To Hear & Determine A Preliminary Objection In Taxation Proceedings?

8. The first issue for determination in the present Application is whether or not a Deputy Registrar and/or a Taxing Officer can entertain and determine a preliminary objection during the Taxation process.
9. According to the Applicant, a Deputy Registrar/Taxing Officer can not hear and or determine any issue of law save for only making findings on the items drawn in the Bill of Costs before him or her.
10. The Applicant is of the view that Paragraph 12 of The Advocates (Remuneration) (Amendment) Order, 2014 does not give any Statutory powers to the Deputy Registrar and/or a Taxing Officer to hear and determine any issue of law save for assessing the items provided in the Bill of Costs.
11. In other words, the action of the Deputy Registrar/Taxing Officer to entertain and determine the Preliminary Objection dated 12.03.2024 on the 25.04.2024 is in excess of his jurisdiction and contrary to The Advocates (Remuneration) (Amendment) Order, 2014.
12. As a result of this omission and/or commission, the Ruling pronounced on the 25.04.2024 should be set-aside and/or vacated and the Bill of Cost dated 19.02.2024 taxed before another Deputy Registrar/Taxing Officer.
13. The Respondent on the other hand submitted that the Preliminary Objection dated 12.03.2024 is one that raised an issue of jurisdiction as to whether the Deputy Registrar/Taxing Officer could hear and determine the Bill of Costs dated 19.02.2024 or not.
14. According to the Respondent, the Deputy Registrar/Taxing Officer undertakes and/or entertains a Bill of Costs as a Judicial Officer who must be couched with the appropriate jurisdiction before assessing any Bill of Costs.
15. In this instance, the Deputy Registrar/Taxing Officer based on the Preliminary Objection dated 12.03.2024 sought to determine if he had the jurisdiction to entertain and determine the Bill of Costs dated 19.02.2024.
16. Based on the Ruling pronounced on the 25.04.2024, the Deputy Registrar/Taxing Officer was of the considered view that it did not have statutory jurisdiction to hear and determine the Bill of Costs dated 19.02.2024 and therefore dismissed the same.
17. The main reason the Respondent filed the Preliminary Objection against the Bill of Costs dated 19.02.2024 was that a similar Bill of Costs dated 25.04.2023 had been filed by the firm of Mugumya & Company, Advocates and subsequently dismissed by this Court on the 20.09.2023 in the proceedings known as Kilgoris Miscellaneous Application No. E004 Of 2023.
18. In essence therefore, the Bill of Costs dated 19.02.2024 filed as Kilgoris Miscellaneous Application No. E.003 Of 2024 was Res Judicata to the previous Bill of Costs dated 20.09.2023 in the proceedings known as Kilgoris Miscellaneous Application No. E003 Of 2024.
19. The Court having appreciated these two conflicting positions, the issue of jurisdiction should be discussed in two different points of law.
20. The first point of law is whether a Taxing Officer has the jurisdiction to hear and determine an issue of law like jurisdiction before proceeding to assess the Bill of Costs.



21. The significance of Jurisdiction in any legal proceedings was exhaustively discussed in the case of *Owner Of Motor Vessel "Lilian S"-versus- Caltex Oil (Kenya) limited* where the Court stated as follows; -

“Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgement is given”.
22. The import of this determination is that any Court and/or Tribunal must always ensure cloth itself with the relevant jurisdiction before entertaining and/or making a legal determination of issues before it.
23. The Applicant is of the view that under the provisions of Paragraph 13 of The Advocates (Remuneration) (Amendment) Order, 2014, a Taxing Officer is limited to only assess and make determination on the items provided in the Bill of costs before the Court.
24. In the event there is any other issue for determination other than the items provided in the Bill of Costs before the Taxing Master, then such an issue should be referred a Judge for determination.
25. On the other hand, the Respondent are of the view that a Taxing Officer has the jurisdiction to determine whether or not the Court has jurisdiction to hear and/or determine the Bill of Costs before it.
26. Looking at the provisions of Paragraph 13A of The Advocates (Remuneration) Order, 2014, the same provides as follows; -

“For the purposes of any proceedings 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.”
27. Both parties have present various authorities in support of their submissions but for this Court, the authority of *Wilfred N. Komosi T/a Komosi & Company Advocates -versus- Flamco Limited* (2017) eKLR is one that settles the issue of whether a Deputy Registrar has jurisdiction to hear and determine a Preliminary Objection or not.
28. According to the understanding of this Court, the above authority clear provides that a Deputy Registrar has the jurisdiction to hear and determine any issues that relate to the jurisdiction of the Court before the Bill of Cost is subjected to assessment.
29. These issues can include the existence of a Client -Advocate relationship which gives raise to the said Bill of Costs before the Taxing Officer.
30. In essence therefore, this Court hereby makes a finding that indeed the Taxing Officer had the jurisdiction to hear and determine the Preliminary Objection dated 12.03.2024.

Issue No. 2- Did The Deputy Registrar/taxing Officer Err In Stricking Out The Bill Of Costs Dated 19.02.2024?

31. The second aspect of this issue of Jurisdiction is whether or not the Bill of Cost dated 19.02.2024 and filed as Kilgoris Miscellanous Application No. E003 Of 2024 was Res judicata to the Bill of Costs



- dated 25.04.2023 and filed as Kilgoris Miscellaneous Application No. E004 Of 2023 hence ought to be strike out as pronounced in the Ruling pronounced on the 25.04.2024.
32. To begin with, the parties in the initial Bill of costs dated 25.04.2023 known as Kilgoris Miscellaneous Application No. E004 Of 2023 Were Rogers Mugumya T/a Mugumya & Company, Advocates -versus- Justus Kigen.
 33. In the second Bill of Costs dated 19.02.2024 and filed as Kilgoris Miscellaneous Application No. E003 Of 2024, the parties are P. Sang & Company, Advocates -versus- Justus Kigen.
 34. As stated by both parties, the Bill of Costs dated 25.04.2023 and filed as Kilgoris Miscellaneous Application NO. E004 OF 2023 was struck out by this Court through its Ruling pronounced on the 20.09.2023 on the basis that there was no client-advocate relationship between the firm of Rogers Mugumya T/a Mugumya & Company, Advocate with the Respondent Justus Kigen.
 35. However, this Court's Ruling pronounced on the 20.09.2023 did not deal with the merits of the Bill of costs dated 25.04.2023 in the proceedings known as Kilgoris Miscellaneous Application No. E004 Of 2023 and/or prohibit the filing of a new Bill of costs as long as it was by the proper party that had an advocate-client relation with the Respondent.
 36. The Deputy Registrar handling the Bill of Costs dated 19.02.2024 in the proceedings known as Kilgoris Miscellaneous Application No. E003 Of 2024 was under a duty while evaluating the issue of Res Judicata to confirm whether the parties were similar to those contained in the Bill of Costs dated 25.04.2023 known as Kilgoris Miscellaneous Application No. E004 Of 2023 and all other issues fully determined on their merit.
 37. A perusal of the second Bill of Costs dated 19.02.2024 known as Kilgoris Miscellaneous Application No. E003 Of 2024 confirms that the Advocate seeking the taxation is P. Sang & Company Advocate and the Advocate representing the said part is Rogers Mugumya T/a Mugumya & Company, Advocate.
 38. Consequently therefore, the person known as Rogers Mugumya T/a Mugumya & Company, Advocate is an agent of P. Sang & Company Advocate and not a substantive party in the Bill of costs dated 19.02.2024 known as Kilgoris Miscellaneous Application No. E.003 Of 2024.
 39. Based on this finding, this Court is of the considered finding that the Bill of Costs dated 19.02.2024 known as Kilgoris Miscellaneous Application No. E003 Of 2024 is not Res Judicate to the Bill of Costs dated 25.02.2023 and should not be struck out on the basis of the Ruling pronounced by this Court on the 20.09.2023 in the proceedings known as Kilgoris Miscellaneous Application No. E004 Of 2023.

Issue No. 3- Is The Applicant Entitled To The Prayers Sought In The Present Application?

40. The third issue for determination is whether or not the Applicant is entitled to the prayers sought in the present Application.
41. Based on the determination on Issue No. 2 hereinabove, this Court is of the considered finding the Taxing Officer erred in striking out the Bill of Costs dated 19.02.2024 known as Kilgoris Miscellaneous Application No. E.003 OF 2024 on the basis of the Ruling pronounced on the 20.09.2023 in the proceedings known as Kilgoris Miscellaneous Application No. E.004 OF 2023.
42. As such, the Ruling pronounced on the 25.04.2024 determining the Preliminary Objection dated 12.03.2024 in the proceedings known as Kilgoris Miscellaneous Application No. E003 OF 2024 is hereby set-aside and/or vacated.



43. Consequently, the Bill of Costs dated 19.02.2024 known as Kilgoris Miscellaneous Application No. E003 OF 2024 is reinstated and will be placed before the Taxing Officer within the Kilgoris Environment & Land Court for taxation.

Issue No. 4- Who Should Bear The Costs Of The Present Application?

44. Each party should bear its own costs.

Conclusion

45. In conclusion, the present Application is hereby determined on the following Orders; -

- A. The chamber summons dated 06.05.2024 is merited.
- B. The ruling and decree of the taxing officer pronounced on the 25.04.2024 is hereby set-aside and/or vacated.
- C. The bill of costs dated 19.02.2024 be and is hereby referred to the taxing officer of kilgoris environment & land court for assessment.
- D. Each party will bear its own costs.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 19.09.2024

EMMANUEL.M.WASHE

JUDGE

In The Presence Of:

Court Assistant:mr Ngeno

Advocate For The Applicant: Mr. Mugunya

Advocate For The Respondent: Mr. Mogambi

