



F.A. Badia & Company Advocates v Malambu (Miscellaneous Application E166 of 2022) [2024] KEHC 10268 (KLR) (Family) (13 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MISCELLANEOUS APPLICATION E166 OF 2022

BM MUSYOKI, J

AUGUST 13, 2024

**IN THE MATTER OF ADVOCATES APPLICATION
FOR TAXATION OF ADVOCATES/CLIENT COSTS**

BETWEEN

F.A. BADIA & COMPANY ADVOCATES APPLICANT

AND

LUCY KASSIM MALAMBU RESPONDENT

RULING

1. The applicant is a firm of advocates which claims to have been retained by the respondent on 10-06-2014 to represent her in this court's succession cause number 1091 of 2009. The applicant deposes that the relationship between the parties were severed on 24-08-2017 which prompted the applicant to file an advocates/client's bill of costs through this court's miscellaneous application number 189 of 2020. The ruling delivered by the taxing officer in that cause has been produced as exhibit Baf-1. The ruling shows that the applicant's bill was allowed at Kshs 439,877.26.
2. The applicant was aggrieved by the decision of the taxing officer and on 1-08-2022, it wrote to the taxing officer requesting for reasons for the decision on specified items. This was pursuant to paragraph 11(1) of the *Advocates Remuneration Order*. The taxing officer by email dated 2-08-2022 informed the applicant that the reasons for her decision were contained in the ruling. Upon receipt of the email, the applicant filed this matter through chamber summons dated 16-08-2022.
3. It is my understanding and I hold the view that the objection of the decision of the taxing officer envisaged in paragraph 11 of the *Advocates Remuneration Order* should be filed in the same cause where the bill of costs was taxed. In the current application, the applicant has filed a fresh and a different cause where this court will not have the benefit of making reference to the bill of costs and the proceedings



being challenged. In my view, the applicant has approached this court through the wrong procedure in which situation the court will find it hard to make decision on the issues placed before it.

4. A reference is not an appeal where separate proceedings are taken in a different file. The bills of costs are for all purposes taxed in the High Court save that they are done by a Deputy Registrar and not a Judge. References are referred to the same court but before a Judge. Letting parties open fresh files in matters of references will result to convolution of proceedings and most likely compromise dispensation and administration of justice.
5. The method the applicant has adopted is not proper. The chamber summons should have been filed in miscellaneous application number E189 of 2020. The application before me is therefore in my view incompetent and irregularly filed and I will not go into its merits.
6. Even if I were to find that this matter was competent and regularly filed, I still find the chamber summons dated 16-08-2022 incompetent and incapable of realising the objectives the same seem to be intended for. The prayers sought in that application are as follows (I quote them verbatim for obvious grammatical errors therein);
 1. That the Honourable Court be and is hereby pleased to set aside in its entirety the ruling dated and delivered on 29th July 2022 at 2.00 pm delivered via Email as rendered by C. Nganga; Deputy Registrar; Family Division Milimani High Court, as far as it touches on Items; 1, 7, 23, 35, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 45, 47, 55, 58, 59, 61, 69, 70, 73, 76, 79, 81, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 114, 115, 116, 119, 122, 123, 125, 128, 133, 134, 137, 139, 140, 147, 148, 150, 155, 162, 163, 165, 176, 177, 180, 181, 183, 185, 186, 187, 188, 189, 191, 195, 198 and 199 of the Applicants/ Former Advocates itemized Advocate/Client bill of costs dated 16th October 2021 and filed in court on 2021-10-16.
 2. That the Honourable Court be and is hereby pleased to set aside in its entirety the Ruling dated and delivered on 29th July 2022 at 2.00 Pm delivered via Email as rendered by C. Nganga; Deputy Registrar; Family Division; Milimani High Court; as far as it touches on Disbursements Items; 10, 12, 14, 15, 17 & 18 of the Applicants/Former Advocates itemized Advocate/Client Bill of costs dated 16th October 2021 and filed in court on 2021-10-16.
 3. That the Honourable Court be and is hereby pleased to issue any other and further orders as it deems appropriate in dispensation of the aforementioned objected/disputed items.
 4. That the Respondents do pay the costs of this Application.
7. It is clear from the above that, the prayers do not make reference to miscellaneous application number 189 of 2020. The way the prayers are couched would mean that there is a ruling in this file in respect of a bill of costs. This file does not have a bill of costs or a ruling on any. It was commenced by the chamber summons stated 16-08-2022 and the only proceedings in it are those related to the said summons. To make the matter worse, the said bill of costs referred to in the application has not been made part of the annexures to the supporting affidavit or otherwise filed.
8. It is my considered view that even if I were to grant the payers sought, the same would be in vain as they will be incapable of being executed since they do not make reference to the miscellaneous application number E189 of 2020.
9. The upshot of the above is that this application is found to be incompetent and incurably irregular. It is struck out with no orders as to costs.



DATED SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF AUGUST 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

