



Kairu & Mccourt Advocates v Directline Assurance Company Limited (Miscellaneous Application E925 of 2020) [2024] KEHC 16635 (KLR) (Civ) (27 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16635 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E925 OF 2020

RC RUTTO, J

DECEMBER 27, 2024

BETWEEN

KAIRU & MCCOURT ADVOCATES APPLICANT

AND

DIRECTLINE ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The applicant has filed a reference against the ruling of the taxing master dated 2nd September 2024. It seeks the following prayers:
 - i. This reference against the decision of the Honorable Elizabeth Chepkoech Tanui DR made on 30th August 2024 be and is hereby allowed;
 - ii. The entire ruling delivered by the taxing officer Honorable Elizabeth Chepkoech Tanui DR made on 30th August 2024 dismissing the applicant's bill of costs dated 10th September 2020 be and is hereby set aside;
 - iii. The Honorable Court be pleased to find that the applicant was at all material times fully retained by the respondent to render legal services to and for the benefit of the respondent;
 - iv. The Honorable Court be pleased to decide find (sic) that the applicant rendered legal services to and for the benefit of the respondent;
 - v. The items 1 to 18 of the applicant's bill of costs dated 10th March 2020 be allowed as drawn in the said bill of costs or assessed by this Honorable Court in such other sums as may appear to be reasonable;



- vi. This Honorable Court be pleased to enter judgment for the applicant against the respondent together with interest at 14% per annum from the date of filing this bill of costs and issue a decree;
 - vii. In the alternative, this Honorable Court be pleased to remit the applicant's bill of costs dated 10th March 2020 to another taxing officer for taxation;
 - viii. The costs of and occasioned by this reference be provided for.
2. The application is premised on the grounds on the body of the Motion and the supporting affidavit of Christine Kirimi, an advocate working in the nature and style of the applicant. She stated that she was the primary advocate in the transaction deposing further as follows: the bill of costs emanated from the sale of all that parcel of land namely L.R. No. 1008/6 registered in the name of the respondent. That the sale agreement and transaction documents prepared by the applicant were executed by the respondent. In addition, the original title document was released to the applicant in March 2018, by the respondent, for onward transmission to the purchaser's advocate upon full settlement of the purchase price. The filing of bill of costs was galvanized by the failure of the respondent to settle the legal fees when its management changed.
 3. The applicant abridged the facts giving rise to the reference from the moment the bill of costs dated 10th March 2020 was filed to urge this court to allow the reference on the following grounds: the taxing master failed to appreciate that that legal services were rendered by the applicant on behalf and for the benefit of the respondent and not Harbour Capital Limited; Harbour Capital Limited was an agent of the respondent who was the principal client; written instructions drawn by Harbour Capital Limited were done in its capacity as a disclosed agent of the respondent; the statutory declaration of Terry Wijenje, the respondent's managing director and principle officer, coupled with several correspondence and documents exchanged between the parties, confirmed that the applicant was acting on the respondent's behest and benefit; the taxing master thus arrived at an erroneous conclusion for stating that Harbour Capital was a necessary party to the proceedings; the taxing master misapplied the principle set out in *Ohaga vs. Akiba Bank Limited* [2007] eKLR; in addition, the respondent executed documents prepared by the applicant as to overwhelmingly affirm that it instructed the applicant to act on its behalf; the taxing master failed to take into account the fact that the bill of costs was unopposed; and the learned taxing master erred in making findings that were unsupported by evidence and instead completely derogated from the evidence on record.
 4. The reference is unopposed. When it was heard on 6th December 2024, the applicant relied on its written submissions dated 4th November 2024 to argue that there existed an advocate client relationship between the applicant and the respondent. It urged this court to rely on the record and make that determination based on the documents adduced before the taxing master. Consequently, enjoining Harbour Capital Limited as a party was superfluous. The respondent, despite being duly served with the day's hearing notice was absent.
 5. I have considered the application, the affidavit, the annexures thereto, the written submissions and the law. The main issue in this reference is whether the applicant received instructions from the respondent insofar as the sale of all that parcel of land namely L.R. No. 1008/6 is concerned. The applicant filed its bill of costs dated 10th March 2020. Under item 1, the bill of costs was premised on instructions to act for and on behalf of the respondent in respect to the sale of L.R. No. 1008/6 in the sum of Kshs. 890,800,000.00.



6. In her ruling dated 30th August 2024, the taxing master held as follows:

“a) The applicant’s bill of costs is supported by a bundle of documents. The bundle of documents contains the supporting affidavit sworn on 10th December 2020 by m/s Christine Kirimi, an advocate of the High Court of Kenya on record for the applicant.

b) In the supporting affidavit, she depones as follows:

.....

(2) I am the advocate who executed the work in the transaction, the subject matter of the bill of costs herein dated 10th March 2020.

(4) On 10th and 16th August 2017, we received the instructions from one Maureen Gathuu an investment officer seating at Harbour Capital Limited to prepare for the sale agreement for the sale of L.R. No. 1008/8 Karen registered in the name of the respondent now produced and shown to me are true copies of the said emails marked as CMK1.

(5) The above e-mail was copied to John Macharia and Terry Wijenje who were then executive and managing directors respectively of the respondent.....

c) From the above, it is clear that instructions came from Harbour Capital Limited which instructed the applicant to act on behalf of the respondent. The advocate-client relationship existed between the applicant and Harbour Capital Limited. Although the work involved the respondent, the instructing client is Harbour Capital Limited. The taxation proceedings cannot proceed without the involvement of Harbour Capital Limited.

d) I have read and understood the contents of the authorities cited especially by the decision of Ohaga vs. Akiba Bank Limited (2007) where the court stated that;

“It is not the law that an advocate must obtain a written authority from the client before he commences a matter. The participation and authority of an advocate in a matter can be implied or discerned from the conduct of the client.”

e) I find that this particular decision cannot apply in the scenario before me, where express instructions were given by a different entity to act for another.

(7) The upshot of the above is a finding that an advocate-client relationship existed between the applicant and Harbour Capital Limited to act in a transaction involving the respondent. The bill of costs ought to be taxed against the same said entity and not the respondent. The preliminary objection succeeds. The bill of costs is dismissed with costs.”



7. In order to determine whether the taxing officer arrived at a proper conclusion, I must distill the evidence before the taxing master as well as that before me to arrive at a just determination. I must first point out that though the taxing master stated that the preliminary objection succeeded, no such pleading was filed by the respondent. However, I must point out that the respondent filed grounds of opposition dated 27th February 2024 stating that it never instructed the applicant to act on its behalf.
8. In further support of its position, the respondent adduced the letter dated 14th August 2017. In it, the applicant, confirmed receipt of instructions from Harbour Capital Limited. It also informed them of their legal fees capped at Kshs. 9,808,000.00.
9. In paragraph 11 of the respondent's affidavit, it was deposed that John Macharia instructed the applicant to act for Harbour Capital Limited in his capacity as director and shareholder of the company. The instructions were directed to the senior partner of the applicant. He was not an agent of the respondent.
10. On the other hand, the applicant produced the sale agreement dated 17th November 2017 drawn by the applicant. It was for the sale of L.R. No. 1008/6 between the respondent vendor and the purchaser Powerchina International Group Limited. Vide letters dated 21st August 2017, 22nd August 2017, 3rd November 2017 and 5th February 2018, the applicant forwarded several conveyance documents relating to the transaction to the purchaser's advocates. They also received a letter dated 31st August 2017 from the vendor's advocates. There are also email exchanges between the counsel for the parties.
11. In a letter dated 12th August 2020, the advocates acting for the respondent referred to several transactions between the parties herein. The letters indicate that they were addressing outstanding legal fees owed to the applicant. My attention is drawn to two transactions listed as 1 and 3 as follows respectively: sale of Karen land to which it was stated: "Directline Assurance Co. Ltd has no documents relating to the transaction. May we have a copy of the sale agreement and transfer. Upon receipt your fee note will be promptly addressed." The second transaction was a loan agreement between the respondent and Harbour Capital Limited. In this case, the applicant was advised to seek settlement of its fees from that company as it was the one that instructed the applicant to act on its behalf.
12. On 5th February 2018, the applicant forwarded conveyance documents for execution by the respondent. Following the logical conclusion of the transaction, the applicant wrote to the respondent vide its letter dated 14th March 2018 advising the respondent that the entire purchase price of Kshs. 890,800,000.00 had been released to them. They thus sought clarity on where to remit the funds. On the same day, the respondent advised the applicant on the relevant bank account to remit the funds. Those sums were acknowledged as received by the respondent.
13. In 2020, there was an attempt to resolve the bill of costs, the subject of this reference, through email exchanges and several letters between the parties herein. Finally, Terry Wijenje the former managing director and principal officer of the respondent at the material times to the transaction swore an affidavit on 12th November 2021. She confirmed that indeed the sale agreement was authorized by the respondent and the applicant acted as its advocates. She also confirmed that the full purchase price was remitted to the respondent who was yet to settle the applicant's legal fees.
14. Looking at the evidence in totality, I find that indeed the applicant was instructed by the respondent in respect to the sale of all that parcel of land namely L.R. No. 1008/6 between the respondent and the purchaser Powerchina International Group Limited. There is no iota of evidence to demonstrate how that transaction involved Harbour Capital Limited because it was not a party to this transaction. It is not denied that the said Harbour Capital Limited was represented by the applicant. However, and most importantly, that did not concern the present transaction.



15. Consequently, I find that the taxing master erred in finding that no advocate client relationship existed between the applicant and the respondent. On the contrary, prodigious evidence proves otherwise. Accordingly, I find that the reference succeeds. I direct that the bill of costs dated 10th March 2020 be placed for assessment of costs before a taxing officer other than Honorable Elizabeth Chepkoech Tanui premised on the fact that an advocate client relationship existed between the applicant and the respondent. The applicant shall have the costs of this reference.

It is so ordered.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 27TH DAY OF DECEMBER 2024.

