



Kithi & Co Advocates v Interweb Global Fortune Ltd & another (Miscellaneous Civil Application E365 of 2022) [2023] KEHC 21471 (KLR) (Commercial and Tax) (31 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E365 OF 2022
JWW MONG'ARE, J
JULY 31, 2023**

BETWEEN

KITHI & CO ADVOCATES ADVOCATE

AND

INTERWEB GLOBAL FORTUNE LTD 1ST CLIENT

MANASES KURIA KARANJA 2ND CLIENT

RULING

1. The applicants have moved this court by a notice of motion application brought under section order 11 of the [Advocates Remuneration Orders](#) filed on July 22, 2022 seeking the following orders:-
 1. That this Honourable court be pleased to direct that the applicant/advocate is not entitled to advocate-client costs sought through his bill of costs herein dated April 25, 2022 owing to conflict of interest by stopping to represent 1st and 2nd respondents /clients Interweb Global Fortune Limited and Manases Kuria Karanja, in the subject matter of taxation, NBI HCCOMM No E071 of 2020, whilst and in order to represent an adverse person who had sued the clients in similar matters, Alice Wambui, in NBI HCCOMM No E161 of 2020.
 2. That costs be to the Clients/Respondents, now Applicants.
2. The Application is supported by the grounds set on its face and the supporting affidavit sworn by Andrew Ombwayo Advocate sworn on July 22, 2022 and a further supplementary affidavit sworn on February 24, 2023 by the advocate. The application is opposed and the Advocate has filed a Replying Affidavit in response thereto.
3. The case by the Applicants is that the Advocate is not entitled to the fees as claimed in the Advocate-Client Bill of costs filed dated April 25, 2022.



4. It is the Applicants position that the Advocate is not entitled to his fees for having represented him in NBI HCCOMM No E071 of 2020 and abandoning the said representation to represent a party in HCCOMM No E161 of 2020 which matters were related and arising from the said cause of action and therefore leading to a conflict of interest for the Advocate. The Applicant argues that the advocate did not inform them of the move to abandon their case and instead represent a party that had sued the Applicants. As a result, the Applicants argue, the advocate is not entitled to charge fees as he was conflicted.
5. The Advocates oppose the application and raise a jurisdictional question. The Advocate points out that the application is brought under the wrong section of the law as the same has been brought under order 11 of the *Advocates Remuneration Order*. The Advocate argues that under the said section of the law, a party seeking to challenge a taxing master's decision on an Advocate-Client Bill of costs and not to prevent a taxation from taking place as is the case herein. The Advocate argues that the issue is premature as there has been no decision by the taxing master on the Advocate-Client Bill of costs as envisioned by the law capable being challenged before the High court and urges the court to find that it is without jurisdiction to handle the matter as filed.

Analysis and Determination:-

6. I have considered the Applicants pleadings as filed herein and the responses filed thereto and carefully analysed the submissions filed by the parties and the oral arguments made in highlighting of the same. The court has been asked to first determine if its clothed with requisite jurisdiction to entertain the matter before it and make a determination. As has been held previously and especially in the locus classicus case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR

“I think that it is reasonably plain 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.”

1. Order 11(1) & (2) of the *Advocates Remuneration Act* provides as follows;

- "1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”

7. From the pleadings placed before me I note that the applicant has moved this court by way of Notice of Motion application and not by Chamber Summons as envisioned above. Secondly, the application seeks to challenge an Advocate-Client Bill of costs which is yet to be taxed and an outcome rendered. To my mind, the application has filed is incompetent before the court. The same having been brought



under order 11 of the Advocates Remuneration can only be filed once there has been a decision rendered by the Deputy Registrar as a taxing master. That is not the prevailing position in the matter herein.

8. While acknowledging that article 165(3) of the Constitution clothes this court with inherent and original jurisdiction to hear all civil and criminal matters, it is imperative to note that those matters must be filed on the correct legal premises and the issues therein must be ripe for determination. The court therefore finds that it has the requisite jurisdiction to hear and determine the matter before it. The court however notes that the orders being sought by the Applicant cannot issue as the matter is not ripe for determination. The Applicant is advised to await the outcome of the Bill of costs before the taxing master before bringing an application under Order 11 of the Advocates Remuneration Order. The court finds and holds that the application as filed is incompetent and the same is struck out in its entirety. Costs of the application herein to be paid to the Advocate by the Applicant/Client. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2023

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J. W. W. MONG'ARE

JUDGE

In the Presence of:-

- 1) Mr. Kibira for the Advocate/Respondent.
- 2) Ms. Naazi for the Client/Applicant.
- 3) Sylvia- court Assistant

