



Anyoka & Associates Advocates v Ongwacho (Miscellaneous Civil Application E175 of 2021) [2023] KEHC 20897 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E175 OF 2021
MS SHARIFF, J
JULY 26, 2023**

BETWEEN

ANYOKA & ASSOCIATES ADVOCATES ADVOCATE

AND

ABEL MORANGA ONGWACHO CLIENT

RULING

1. The client filed a Notice of Motion dated January 13, 2023 seeking;
 - a. Pending the hearing and determination of this motion, inter parties, there be stay of execution of a decree dated February 7, 2022 and warrants of arrest in execution issued on October 13, 2022 and any other execution in relation to retainer between the advocate and the client.
 - b. The honourable court do set aside the taxation herein and decree dated February 7, 2022.
 - c. The court does grant the client such orders as it may deem just and fit in the circumstances of the case.
 - d. Costs of the application.

2. The application is premised on the fact that the advocate and client had a written agreement dated September 29, 2020 and January 10, 2022 in force which is in line with Section 45 of the *Advocates Act*. That the client honoured his part of the bargain and paid the fees leaving a sum of Kshs 151,000/- outstanding. That the advocate despite being paid obtained warrants of arrest against the applicant.



3. He asserts that the taxation of the advocate-client bill of costs was illegal in light of the agreement. That unless the orders sought herein are granted, the client is at risk of being arrested and the motion rendered nugatory.
4. The advocate filed a replying affidavit deponing that indeed there is an agreement on the payment of the fees due to the advocates. That one of the terms of the agreement was that in the event of failure to pay any of the installments, the whole amount becomes due.
5. He depones that the client had not advanced reasons to warrant the setting aside of the agreement entered into. That the warrants were issued after the client defaulted.
6. The parties canvassed the application by way of written submissions. Both parties complied and the sentiments therein have been taken into account.

Analysis and Determination.

7. As can be discerned from material placed before this court, it is admitted by both parties that the client entered into consent with the advocate for the payment of the advocates fees.
8. I have also considered the consent recorded in the matter. The same is dated January 10, 2022 and filed in court on February 7, 2022. The consent states;

"That both bill of costs dated September 21, 2021 be and is hereby taxed at Kshs 199,500/- and the judgement debtor has agreed to liquidate the same amount in full on or before March 10, 2022 without fail.

In default, warrant of arrest to issue without notice."

9. Both parties agree that the consent is in force and binding. A perusal of this file shows that the consent was adopted by the learned Deputy Registrar of this Court Hon L Akoth on March 14, 2022 and the matter thus became a decree of the court.
10. The client however submits that the learned Deputy Registrar erred by taxing the bill of costs. That where there is a consent, the court has no jurisdiction to tax the advocate's bill.
11. With due respect, this position is correct since Section 45 of the Advocates provides;

(1) Subject to section 46 and whether or not an order is in force under section 44, an advocate and his client may—

(a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate's remuneration in respect thereof;

(b)

(c)

and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

12. Having perused the agreement, the same meets the requirements set out by the said section. The only grounds that may avail the client in such a scenario reprieve are contained in Sub-Section 2 which makes the following grounds as open to setting aside of an agreement;it is harsh and unconscionable,



exorbitant or unreasonable. Additionally, any such application has to be made by Chamber Summons. This is not the case herein.

13. This being the case, I find that the agreement entered into by the parties herein is binding. The assertion by the client that there was a taxation is erroneous. The decree being executed was entered into by consent and the court merely endorsed the consent and issued a decree and nothing more.
14. In the circumstances, I am satisfied that this being matter regulated by Section 45 of the *Advocates Act*, the court has not been properly moved and I hereby proceed to dismiss the application with costs to the advocate/respondent assessed at Kshs 5,000/=.
15. The interim orders now in force given on January 17, 2023 are hereby vacated.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 26TH DAY OF JULY 2023.

MWANAISHA. S. SHARIFF

JUDGE

