



**Nyandoro and Company Advocates v National Water Conservation
and Pipeline Corporation (Miscellaneous Application 157 of 2016)
[2022] KEHC 142 (KLR) (Commercial and Tax) (20 January 2022) (Ruling)**

Neutral citation: [2022] KEHC 142 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 157 OF 2016**

JN MULWA, J

JANUARY 20, 2022

**IN THE MATTER OF ADVOCATES ACT CAP 16 OF THE LAWS OF KENYA
AND**

**IN THE MATTER OF AN ADVOCATE'S RIGHT TO EXERCISE
LIEN OVER THE CLIENT'S MONEY/PROPERTY IN RESPECT OF
OUTSTANDING LEGAL FEES FOR PROFESSIONAL SERVICES RENDERED**

BETWEEN

NYANDORO AND COMPANY ADVOCATES APPLICANT

AND

**NATIONAL WATER CONSERVATION AND PIPELINE
CORPORATION RESPONDENT**

RULING

1. Before me are two applications filed by the Applicant, Nyandoro and Company Advocates dated 4/4/2016 and 20/5/2016.
2. Prior to filing of the 1st application, an Originating Summons (O.S) dated 4/4/2016 had been filed on 5/4/2016 whereof the Advocates as Applicants sought several orders; inter alia, that the applicant be and is hereby allowed to hold as lien for its unpaid legal fees that the contested sum of Kshs. 2,800,00/= being part of the Kshs. 6,000,000/= held by the Applicant which is payable to the Respondent pending the filing and determination of the Applicant's Bill of Costs.



3. Upon perusal of the court proceedings in this court file, I find that the National Water Conservation & Pipeline Corporation had filed an appeal to the Court of Appeal being Civil Appeal No. 216 of 2016, against Golbo Construction Co. Ltd.
 4. On the 25/4/2014, the Court of Appeal, by consent of the Parties Advocates recorded the following orders:
 - a. That the Appellant appeal lodged before this Honourable Court be withdrawn.
 - b. That the security of Kenya Shillings Six Million deposited in court by the Appellant/Applicant be released unconditionally to the Appellant - National Water Conservation & Pipeline.
 - c. That the matter be marked as settled.
 5. The above orders were issued before this matter was filed by the Advocates/Applicants. Going by the above, the sum of Kshs. 6,000,000/= was or ought to have been released to the National Water Conservation & Pipeline Corporation/Respondent.
 6. The Originating Summons (O.S) filed on the 5/4/2016 by the Advocates seeks that the sum of Kshs. 2,800,000/= be held as lien as contested by the Advocates pending hearing and determination of the Originating Summon, and the filing and taxation of its Bill of Costs, and the sum of Kshs. 3,200,000/= being the balance be held by the Advocates pending taxation of its bill of costs.
 7. This court has not been informed whether the Court of Appeal orders were complied with or not. However, by the Replying Affidavit by the Respondent dated 12/4/2016, there is an averment that upon the Court of Appeal issuing its orders referred to above in respect of the money (Kshs 6m) the Advocates pursued the said money deposited in court and got it released to themselves.
 8. This, in my considered opinion gave birth to the application dated 20/5/2016 in which the applicant sought inter alia, orders:
 - a. That an order for mandatory injunction to issue compelling M/s Nyandoro & co. Advocates to deliver up the sum of Kshs. 6,000,000/= to the Respondent pending hearing and determination of the Applicants O.S and taxation of its Bill of Costs.
 - b. In the alternative, a mandatory injunction be issued compelling M/s Nyandoro & Co. Advocates to deliver up the sum of Kshs. 3,200,000/= to the Applicant (client) pending hearing and determination of the Applicant's Originating Summons and taxation of its Bill of Costs.
 9. I have considered both applications, the Supporting and Further Affidavits as well as each party's Written Submissions.
- The Issues for determination**
- a. Whether the Court of Appeal orders, by consent of the parties were complied with or not.
 - b. Whether the Advocates can hold as lien over their client's money pending taxation of the Advocates Bill of Costs.
 - c. Whether the Applicant Advocates have filed an Advocate-Client Bill of costs and if so, whether the Bill of Costs has been taxed, and if so, the outcome.
10. It is sought that the Applicants be allowed to hold as lien for its unpaid legal fees, a sum of Kshs. 2,800,000/= uncontested, but keep holding Kshs. 3,200,000/= pending taxation of its Bill of Costs,



and on the part of the Respondent, that a mandatory injunction compelling the Advocates to deliver the total sum of Kshs. 6 million to the National Water Conservation and Pipeline Corporation (Respondent), pending taxation of the Advocates Bill of Costs.

Applicants/Advocates Submissions

11. It is submitted that the Advocates have a legal right, to hold as lien, amount of monies paid to them pending taxation of their Bill of Costs citing Section 52 of the *Advocates Act*, Cap 16 Laws of Kenya, that the advocates:

“... may at any time declare the advocate entitled to a charge on property recovered or preserved through his instrumentality for his taxed costs in reference to that suit or matter...”

12. The Applicant cited the following decisions by my brother Judge, Justice Mabeya in *United Insurance Co. Ltd vs Edward Muriu Kamau* [2012] eKLR, and *Njoroge Nani Mungai & Peter Munge Murage P/A Muriu Mungai & co. Advocates* [2013] eKLR, to the effect that an advocate’s accrued fee is to be protected at all costs including holding the property of a client as alien, and proceeded to direct the advocates to file and tax its bill of costs in the usual manner.
13. Further cited are *Prokookeanska Plaridba vs Int. Lines SrL*, [1988] ALL ER and *Withers LLP vs Langbar International Ltd* [2011] EWCA Civ. 1419 [2011] ALL ER. The cases emphasized that an advocate is entitled to retain and hold as lien a client’s property or money until he is paid his fees. These authorities are persuasive only.

Submissions by the Client/Respondent

14. The court notes that the Advocates did not comply with the Court of Appeal orders to have the money deposited in Court released to the client, but was released to themselves. I have not been informed how that happened in the face of a clear order by the Court of Appeal. It is the Respondents submission that Kshs. 6,000,000/= be released to the Respondent as per the Court of Appeal orders, and in the alternative, by the application dated 20/5/2016, the money held by the Respondent be released to them, or the sum of Kshs. 3.2 million be released to the client pending taxation of its Bill of Costs.
15. It is submitted that the Advocates are holding the money illegally and seeks that it be released to the client. It is further submitted that the orders issued by the Court of Appeal were by consent of the parties and the Advocates failed to comply and upon depositing the same into court, pursued and got it released to itself which was done.

The application dated 20/5/2016

16. Citing Order 52 Rule 4, *Civil Procedure Rules*, it is submitted that the advocates cannot withhold its client’s money without its consent as to do so is illegal. Cases decided in support are; *John Karungai Nyamu & another vs Muu & Associates Advocates* [2008] eKLR, and *Simon Njumwa Magbanga vs Joyce Jeptarus Kagongo T/A Chesaro & Co Advocates* [2014] eKLR to the effect that an advocate has no right under any law to hold monies that has come to him for onward transmission to his client as lien, and therefore the continued holding of the client’s money by the advocate is illegal.
17. Also cited is Order 52 Rule 4(1)(d) of the Civil Procedure Rules that an advocate’s fees is not due until his Bill of Costs has been taxed by the Court.

Analysis and Determination

18. It is not in dispute that the Applicant Advocates are entitled to their legal fees for services rendered under instructions from the Respondents. Section 52 of the *Advocates Act* is clear that the provision is



applicable only after costs are taxed in respect to the matter at issue. I am not persuaded by the holding by my brother Judge, Hon. Mabeya in *United Insurance Ltd (supra)* that:

“I think Section 52 of the *Advocates Act* is clear that an Advocate accrued fee is to be protected at all costs including holding the property of a client as alien...”(emphasis added).

19. In my considered opinion, the above holding should be interpreted to mean after taxation of the advocate’s Bill of Costs, and not before. This is so because an Advocate’s fee becomes due and payable upon taxation and or by consent of the parties.

Section 48 (1) of the *Advocates Act* stipulates that:

“Subject to this Act, no suit shall be brought for recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the Advocate or a partner in his firm has been delivered or sent by registered post to the client...”

20. Order 52 Rule 4 Civil Procedure Rules states that:

“4(1) where the relationship of advocate and client exists or has existed, the court may, on the application of the client or his legal personal representative, make orders for

- a. ...
- b. ...
- c. ...
- d. The payment into or lodging in court of any such of money or securities

21. In *John Karungari Nyamu & another (Supra)*, Lesiit J. (as she was then) relied on the above provision and held that:

“the Advocate has no right under any law to hold monies that which have come to him for onward transmission to his client as lien...” and further rendered that:

“... I agree with the learned Judge’s holding that the Advocate’s fee only becomes due after the Bill of Costs has been taxed by the Court. Before the Bill is taxed, there is no telling how much is due to the Advocate. The position is therefore that an advocate cannot exercise lien over client’s money on basis of a Bill of Costs that is yet to be taxed. It is improper for an advocate to withhold a client’s money on account of fees that is yet to be ascertained through the taxation process. The Advocate should release the client’s money to him. (emphasis added)

I fully agree with the above holding by the Learned Judges on the issue.

22. I have perused the court proceedings. I have not seen any Certificate of Costs issued to the advocates. The court of Appeal orders that was by consent of the parties settled the appeal. Consequently, in respect of the application dated 4/4/2016, I find no merit therein, and proceed to dismiss the application. As to the Application dated 20/5/2016, and for the foregoing, I am persuaded to allow prayer No. b. It is so allowed.
23. For the foregoing, the advocates are directed and compelled by a Mandatory Injunction to deliver up the sum of Kshs. 3,200,000/= to the Applicant, National Water Conservation and Pipeline



Corporation within 60 days of this order, pending taxation of its Bill of Costs. It is further ordered that the Advocates/Respondents shall cause its bill of costs to be taxed, if already filed, within 60 days, and if not filed, the Bill of Costs to be filed and served and taxed within 90 days of this ruling.

24. In default of any of the above orders, the client/Applicant shall be at liberty to approach the court for further orders. Costs of the Application shall be in the cause.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JANUARY 2022

J. N. MULWA

JUDGE

