



REPUBLIC OF KENYA



KENYA LAW

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Njuguna & Partners Advocates v Populite International Ltd & 2 others (Environment and Land Miscellaneous Application E029 of 2022) [2023] KEELC 17603 (KLR) (25 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E029 OF 2022**

LN MBUGUA, J

MAY 25, 2023

**IN THE MATTER OF: TAXATION OF ADVOCATES CLIENT BILL
OF COSTS
BETWEEN:**

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NJUGUNA & PARTNERS ADVOCATES APPLICANT

AND

POPULITE INTERNATIONAL LTD 1ST RESPONDENT

STEPHEN KINUTHIA 2ND RESPONDENT

JOHN KARIUKI MBUU 3RD RESPONDENT

RULING

1. The Applicant's reference dated December 2, 2022 is for determination. The Applicant seeks to set aside the decision of the taxing officer delivered on November 21, 2022 on the Advocate-Client bill of costs dated February 15, 2022 and prays that the bill be remitted for taxation with appropriate directions.
2. The application is based on grounds on its face and on the annexed affidavit of Charles Mbugua Njuguna sworn on December 2, 2022. He avers that the Advocate-Client bill of costs dated February 15, 2022 arose from the Respondents' instructions to the Applicant to defend suit No 1023 of 2014 *Ukulima Co-operative Savings & Credit Limited v Populite International Limited*. He adds that vide the agreement dated April 15, 2015, the 2nd and 3rd Respondents agreed to be jointly and severally liable for the Advocates fees and disbursement.
3. He further avers that the Respondents filed an application dated July 1, 2022 which sought to strike out the bill of costs dated February 15, 2022 on the basis that the letter dated June 24, 2015 amounted



- to an agreement on fees between the Advocates and the 1st Respondent and on November 21, 2022, the taxing officer delivered a ruling in Respondents' favour.
4. He avers that the taxing officer erred in law and fact in her finding that the letter dated June 24, 2015 amounted to an agreement for fees. He points out that the said letter was merely indicating the minimum instruction fee the matter would attract and it did not request the client to approve, thus the stamp and endorsement by the client on the said letter is of no consequence. He adds that the Taxing Officer failed to consider the agreement dated April 15, 2015 in which the 2nd and 3rd Respondents agreed to be jointly and severally liable for the Advocates fees but it does not infer that there had been an agreement on fees.
 5. In opposition to the application, the Respondents filed a replying affidavit sworn on February 13, 2023 by the 2nd Respondent. He avers that in opposition to the Applicant's bill of costs dated February 15, 2022, the Respondents filed an application dated July 28, 2011 on the basis that there was a fee agreement between the Advocate and the 1st Respondent over the conduct of ELC Court Case No. 1023 of 2014 (Consolidated with ELC Case No. 305 of 2015) upon which the Advocate's fees was duly paid.
 6. He admits that in 2014, the 1st Respondent instructed the Applicant to defend it in ELC Case No. 1023 of 2014, while in year 2015, it instructed the Applicant to file ELC Case No.305 of 2015 of which the 2 matters were consolidated on June 23, 2015. The 2 matters were heard together and one judgement was delivered.
 7. He avers that by an email of April 30, 2015, Charles Njuguna advocate of the Applicant's firm wrote to him and the 3rd Respondent proposing a meeting to discuss the fee agreement and strategy for ELC Case No. 1023 of 2014. They met at Parklands Sports Club and discussed a joint legal fee for the 2 matters and instructed the Applicant to consolidate the matter.
 8. He avers that after consolidation on 24.6.2015, the Applicant sent them a joint fee agreement of ksh. 1,293,900/= for ELC Court Case No.1023 of 2014 and ksh.5, 280, 000/= for ELC Court Case No. 305 of 2015. It was endorsed by the 1st Respondent which duly paid the Advocates fees.
 9. He deposes that to their surprise, the Applicant has filed 2 separate bills for ksh.18,198,401.50 and Ksh. 24, 086 160 in the files Misc. E029 of 2022 for ELC Case No. 1023 of 2014 and Misc. E028 of 2022 for case ELC Case No. 305 of 2015 respectively.
 10. He avers that the taxing officer correctly held that there was a binding agreement between the Respondent and the Applicant which was duly honored.**
 11. The matter was canvassed by way of written submissions. The Applicant's sole framed issue for determination in its submissions dated 15.3.2023 is whether the letter dated June 24, 2015 amounts to an agreement for fees. The applicant relies on the case of *Shiva Enterprises v Mwangi Njenga & Company Advocates* [2020] eKLR as well as the case of *Ali Mohammed Egal v Maina & Onsare Partners Advocates* [2021] eKLR to submit that correspondence does not amount to an agreement for fees and that the Taxing officer failed to consider the letter dated 24.6.2015 holistically.
 12. The Respondents submissions are dated April 11, 2023 where they aver that the *Advocates Act* does not prescribe the format of a fee agreement as long as the requirements of section 45 (1) of the said Act are met. They rely on the Court of Appeal's decision in *Njogu & Company Advocates v National Bank of Kenya Limited* [2016] eKLR as well as the decision in *Shiva Enterprises v Mwangi Njenga & Company Advocates* [2020] eKLR (*supra*).



13. The issue in contention is whether Taxing Master erred in finding that there was a fee agreement contained in the letter dated June 24, 2015. Pursuant to the provisions of section 45 (1) of the Advocates Act, a remuneration agreement shall be valid and binding on the parties, provided it is in writing and signed by the client or his duly authorized agent.
14. Therefore, correspondence is capable of giving rise to a fee agreement Provided that it meets the requirements of the applicable law. That would mean that an offer, acceptance and consideration can be discerned from the correspondence in issue.
15. In Zaku & Nzaku Advocates v Tabitha Waitibera Mararo as Trustee of Tracy Naserian Kaaka (minor) & others [2020]eKLR, it was held that;

“An agreement for fees contemplated under Section 45, is a contract whose terms and conditions must be clear and unambiguous. There must be consensus or meeting of the mind between the parties and it must also be entered into freely without undue influence or promise.”
16. In the case of Shiva Enterprises v Mwangi Njenga & Company Advocates [2020] eKLR cited by both protagonists, the court stated that;

“I do not think that such agreement must be in one document titled “agreement for payment of legal fees.” It is sufficient that there be a memorandum in writing, and this would include correspondences, so long as these reveal that they are aimed at fixing the fee payable. Indeed, in the case of D Njogu & Company Advocates vs National Bank of Kenya Limited, Civil Appeal No. 165 of 2007 (2016) eKLR, where the Court of Appeal upheld an agreement between an advocate and client, the agreement was actually construed from a letter”.
17. The letter dated June 24, 2015 refers to the instruction fees on ELC 1023 of 2014 and ELC 305 of 2015. It is signed and endorsed with the 1st Respondents stamp as ‘approved’. I hold the view that the same constitutes an agreement for fees. There is no indication that the parties there after entered into any further agreement(s) or variation of the letter in question.
18. The Applicant also argued that that the Taxing Officer failed to consider the Agreement dated April 15, 2015 and infer that if there was an agreement for fees, it would have been clearly drawn and included the 2nd and 3rd Respondents. The letter dated June 24, 2015 is addressed to all the Respondents and not the 1st Respondent who had instructed the Applicant. Including the 2nd and 3rd Respondents in the said letter could only mean that the same was in furtherance to the earlier agreement dated April 15, 2015.
19. In the circumstances, I find that the Taxing officer did not err in principle as section 45 (6) of the Advocates Act prohibits taxation of a bill of costs in the face of an agreement for fees between an Advocate and his client. This reference is hereby dismissed with costs to the Respondents. This ruling is to apply in the other file Misc. EO28 of 2022.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-



Njuguna for Applicant
Midenga for Respondents
Court assistant: Eddel

