



**Nduati & Co. Advocates v Kenya Orient Insurance Co. Ltd (Miscellaneous Civil Application 436 of 2019) [2022] KEHC 3341 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3341 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS CIVIL APPLICATION 436 OF 2019  
MM KASANGO, J  
JUNE 23, 2022**

**BETWEEN**

**NDUATI & CO. ADVOCATES ..... APPLICANT**

**AND**

**KENYA ORIENT INSURANCE CO. LTD ..... RESPONDENT**

**RULING**

1. The Law Firm Nduati & Company Advocates (hereinafter the Advocate) had their Advocate/Client bills of costs taxed in various matters namely Misc. Nos. 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 427 and 447 of 2019. The advocate seeks by Notice of Motion application dated 2<sup>nd</sup> March, 2020 the consolidation of all the aforesated mattes with this present matter and consolidation for judgment to be entered for the amount taxed in all those matters plus 14% interest.
2. The application is opposed by Kenya Orient Insurance Company Limited (hereinafter the Client). The client in opposition stated that the taxed amount had been paid to the advocate; that the advocate is not legally entitled to charge interest; and that the application for consolidation should have been filed in individual files.

**Analysis**

3. The application before court will either succeed or fail on the determination whether the various matters should be consolidated.
4. For cases to be consolidated they must be pending determination, in other words, judgment should not have been entered. In these cases sought to be consolidated, taxation had already been concluded. There is therefore, no common question of fact or law yet to be determined. Also, the various bills of costs do not arise from the same transaction. It is therefore not desirable to order consolidation of the various matters which are diverse in nature.



5. But perhaps the most important reason why the consolidation sought is declined is because that prayer is res judicata. The client by an application dated 13<sup>th</sup> July, 2020, amongst other prayers sought consolidation of the same matters as sought by the advocate. That application was heard by the taxing master of this Court and by a Ruling dated 10<sup>th</sup> December, 2020, the application was dismissed. Since the issue of consolidation was substantially in issue in the clients dismissed application, the advocate cannot raise the same issue again. In the case *Suleiman Said Shabbal vs. Independent Electoral & Boundaries Commission & 3 Others* (2014) eKLR the court is considering what constitutes res judicata as:-

“To constitute res judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.”

6. The issue on consolidation having been heard and finally determined and because the taxing master’s decision was not appealed, this Court cannot grant the prayer for consolidation as sought. Since the other prayer for entry of judgment for taxed costs was dependent on the order for consolidation being granted, the application fails.

### **Disposition**

5. The notice of motion dated 2<sup>nd</sup> March, 2020 for reasons set out above is dismissed with costs.

**RULING DATED AND DELIVERED AT KIAMBU THIS 23<sup>RD</sup> DAY OF JUNE, 2022.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Mourice

For Applicant :

For Respondent

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**

