



**Shibanda v Nandalwa (Miscellaneous Civil Application
79 of 2017) [2022] KEHC 12629 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION 79 OF 2017**

WM MUSYOKA, J

JULY 29, 2022

BETWEEN

VIVIAN A SHIBANDA APPLICANT

AND

BONFACE NANDALWA RESPONDENT

RULING

1. This matter was due for ruling on April 1, 2022. Delivery of the ruling has been delayed, as I had called for the file in Kakamega SCMCCC no 181 of 2016, which was not availed until July 27, 2022. I regret the delay.
2. On November 7, 2017, Vivian A Shibanda, trading as VA Shibanda & Company, Advocates, who I shall refer to hereafter as the applicant, filed an advocate-client bill of costs from taxation, of even date, to be taxed against Bonface Nandalwe, who I shall refer to hereafter as the respondent.
3. The respondent reacted to the bill of costs by way of grounds of opposition dated November 27, 2017. It is averred that the applicant had no valid instructions to act for him, the bill of costs dated November 7 was a nullity, the applicant had no authority and did not obtain instructions to represent the respondent, the respondent objected to all the items in the said bill, and the interests of justice would be served if the bill was struck out.
4. There is a letter on record, from the advocate for the respondent, dated March 7, 2018, addressed to the deputy registrar, indicating that the respondent had died on March 1, 2018, and asking for time to enable them substitute him. There is nothing on record to indicate whether or not any substitution was done. Equally, there is no proof that the respondent was dead.
5. On March 20, 2019, the deputy registrar delivered a ruling, dated March 16, 2019, stating that she had no jurisdiction to deal with the issues raised in the grounds of opposition.



6. On July 16, 2019, I directed the applicant to file written submissions on the issues raised in the grounds of opposition. There was compliance, for she filed written submissions, dated August 16, 2021. She cited *Wilfred N Konosi t/a Konosi & Co Advocates vs Flamco Limited* [2017]eKLR, to argue that the nexces between the advocate and his client was the instructions by the client to the advocate, and in absence of that relationship there was no jurisdiction. She also submitted that the judicial officer faced with the bill of costs had jurisdiction to determine the question. That would mean a deputy registrar, sitting as a taxing officer, had the jurisdiction to determine whether or not there was an advocate/client relationship, she argued.
7. I agree with the position stated in *Wilfred N Konosi t/a Konosi & Co Advocates vs Flamco Limited* [2017] eKLR. Whether there exist an advocate/client relationship is a preliminary issue. The taxing master/officer has jurisdiction to determine that preliminary issue. The deputy registrar, therefore, had jurisdiction to deal with that issue, and was wrong, to rule on March 20, 2019, that she had no jurisdiction to decide the matter. She would lack jurisdiction to handle the matter if she had found that there was no advocate/client relationship between the applicant herein and the respondent.
8. I have perused the file in Kakamega CMCCC no 181 of 2016. The plaint in that matter was filed on June 10 2016, dated May 30, 2016 drawn by the applicant. It was accompanied by a witness statement, in the name of the respondent, dated May 30, 2016, drawn by the applicant and signed by the respondent. An amended plaint was lodged in the record on December 23, 2016, dated December 2, 2016. It was accompanied by a verifying affidavit drawn by the applicant sworn by the respondent, on December 22, 2016.
9. The matter came up for hearing on August 16, 2017. Both the applicant and the respondent attended court. The respondent testified, led in evidence in chief by the applicant, who also re-examined him. In the end, the respondent applied for an adjournment of the matter to call another witness. It was after that adjournment that the applicant was replaced by the firm of Khakasa Namulala & Company Advocates, vide a notice of change of advocates filed in court on November 7, 2017.
10. The act of the respondent of executing documents on May 30, 2016 and December 22, 2016, drawn by the applicant, which the applicant then filed in court, is sufficient proof that there were instructions by the respondent to the applicant for, if there were no such instructions, the respondent would not have signed documents drawn by the applicant without his instructions.
11. If there were no instructions to act, the respondent would not have attended court on August 16, 2017 when the matter came up for hearing, the date having been fixed at the behest of the applicant, and allowed himself to be led in evidence by the applicant. If there were no instructions, initially, then the very act of allowing the applicant to lead him in the evidence amounted to acquiescing, which meant that the applicant had ostensible or apparent authority to act for the respondent in the circumstances.
12. The conclusion that I make in the circumstances is that there was a clear advocate/client relationship between the applicant and the respondent. The deputy registrar has to jurisdiction, as a taxing officer, to tax the bill of costs herein, filed on November 7, 2017, and bearing an even date.
13. The matter herein shall be remitted to the taxing officer, for the purpose of having that bill taxed. It is so ordered.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF JULY 2022

W M MUSYOKA

JUDGE

