



Exclusive Living East Africa Limited & another v Bulimu (Commercial Civil Case E453 of 2020) [2022] KEHC 11876 (KLR) (Commercial and Tax) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 11876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CIVIL CASE E453 OF 2020**

WA OKWANY, J

JULY 28, 2022

BETWEEN

EXCLUSIVE LIVING EAST AFRICA LIMITED 1ST APPLICANT

MARC OLIVER STRACK 2ND APPLICANT

AND

ANN MIDEVA BULIMU RESPONDENT

RULING

1. In a ruling delivered by this court on 19th May 2022, this court directed that the all the rental income from suit property be deposited in a joint interest earning account in the names of advocates for both parties.
2. The said ruling precipitated the filing of the application dated 8th June 2022 wherein the applicant seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. The Ruling and consequential orders of this Honourable Court issued on 19th May, 2022 be reviewed and varied by replacing at order 1 the name of "Okoth & Co. Advocates" with the name of "H&K Law Advocates.
 - d. Costs of the Application abide in the main cause.
3. The application is supported by the affidavit of the 2nd plaintiff Marc Oliver Strack and is premised on the following grounds:-



1. That *vide* the ruling of the Honourable Court dated and delivered on 9th May, 2022, the Honourable Court directed and ordered that all the rental income of the premises erected on L.R. No. 209/2389/16 be deposited in a joint interest earning account held in the names of the Advocates for the Applicants (being Okoth & Co. Advocates) and the Advocates for the Respondent (being Nakhone & Co. Advocates).
 2. That the Applicants have since changed their Advocates from the firms of Okoth & Co. Advocates and P.K. Kitenge & Co. Advocates to the firm of H&K Law Advocates.
 3. That with the change of Applicants' Advocates, it is necessary, just and appropriate that the ruling of the Court be reviewed and varied to enable the joint account to be opened and maintained in the joint names of the present Applicants' Advocates and that of the Respondent's advocates.
 4. That the Applicants' Advocates herein have unsuccessfully tried engaging the Respondent's Advocates with a view to recording a consent on the matter, thus necessitating the Application herein.
 5. That the Applicants are reasonably apprehensive that the rental income from the suit premises will continue being channeled to the accounts of the Respondent to the Applicants' detriment and loss unless this Application is heard on priority basis and interim orders sought are granted.
 6. That it is in the interest of justice that the Application be allowed.
 7. That this Application has been brought in good faith, timeously and in the interest of justice.
4. Mr. Jacob Okoth Advocate opposed the application through the replying affidavit dated 1st July 2022 wherein he states that he acted for the plaintiffs in this matter and obtained a favourable outcome before the plaintiffs absconded with his legal fees and appointed the law firm of MS H&K Advocates to continue with the matter. He states that the plaintiffs did not settle his legal fees and should therefore not be allowed to use and discard advocates. He further states that his law firm is not against the plaintiffs' decision to change legal representation but that prior to the change, the plaintiffs should be compelled to pay/settle his legal fees.
5. Parties canvassed the application by way of written submissions.

Analysis

6. I have considered the application, the response and the written submissions. I find that the main issue for determination is whether the applicants herein are entitled to the orders sought.
7. The respondents did not oppose the application but the firm of Okoth & Company advocates filed a replying affidavit stating that they represented the plaintiff and had obtained a favourable outcome in the ruling dated 19th May 2022. Mr. Okoth faulted the plaintiff for failing to pay his legal fees and added that he was apprehensive that should the application be allowed, the plaintiffs would not pay his legal fees.
8. In the case of *Samson Okun Orinda v Ayub Muthee Igweta & 2 others* (2013) eKLR the court held:-

No advocate can impose himself upon a client simply because he has not been paid his professional fees in full. The Advocate who has not been paid his professional fees in full has a remedy to file Advocate/client bill of costs for taxation on his fees but he cannot simply say since I have not been paid my fees in full I shall continue to act for you whether you like



it or not. Nor can he insist on being given a guarantee that all his unpaid professional fees would be paid before a new Counsel is allowed to come on record. As the law provides for mechanism on how an Advocate can recover his unpaid fees from his former client who has changed his Advocate, the former Counsel cannot be heard to say any change of advocate should not be allowed as he would be greatly prejudiced if an incoming Advocate is allowed to come on record.

9. It was not disputed that the plaintiffs changed their advocates and this was exhibited by the notice of change of advocates dated 24th May 2022. The issue in contention is whether the firm of Okoth & Company Advocates ought to be paid their legal fees before the application is allowed. I have considered the assertions of Mr. Okoth and I find that while a litigant is entitled to legal representation of his choice, the plaintiffs' former advocate is similarly entitled to the payment of the outstanding legal fees.
10. I however note that the advocate's fees is a matter that cannot be determined in this application as the same should be the subject of a taxation before the Deputy Registrar. The most logical option for the respondent should be to file his Advocate/Client Bill of Costs and proceed to tax the same.
11. In effect therefore, the application for review stands unopposed by the respondent and it is therefore allowed as prayed in the following terms:-
 - a. The law firm of Okoth & Co. Advocates are hereby replaced by H&K Law Advocates at order 1 in the ruling dated 19th May 2022.
 - b. The costs of the application be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF JULY 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Kiprono for Plaintiff/Applicant

Court Assistant- Sylvia

