



Makhecha & Gitonga Advocates v Standard Group Plc (Miscellaneous Application E236 of 2021) [2022] KEHC 12416 (KLR) (Civ) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12416 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION E236 OF 2021

JN MULWA, J

JULY 28, 2022

BETWEEN

MAKHECHA & GITONGA ADVOCATES PLAINTIFF

AND

STANDARD GROUP PLC DEFENDANT

RULING

1. The Advocate-client Bill of Costs in respect of HCCC No. 184 of 2018, *Hon. Dr. Evans Kidero v Godfrey Mosoku & The Standard Group PLC* was taxed on the 18th October, 2021 and allowed in the sum of Kshs. 229,235/=. A certificate of Taxation was issued on the 9th November, 2021 in the said sum.
2. By an Application dated 22nd March, 2022, the Applicant Makhecha & Gitonga Advocates sought, against The Standard Group Limited, orders:
 - 1) That the Honourable court be pleased to convert the certificate of costs for Kshs. 229,235 dated 9th November, 2021 into a Judgement together with interest at 14% per annum from the 31st May, 2021 until payment in full.
 - 2) That costs of the application be awarded to the Applicant.
3. At the Supporting Affidavit sworn by James Gathuri Advocates on the 22nd March 2022, the Certificate of Taxation is annexed. The Application was served upon the clients Advocates Ng'ania & Company Advocates on the 21st June 2022, a hearing notice for the application was also served upon the said advocates, for the same date by email; and an affidavit of service filed, as averred by the Applicant.
4. On the 22nd June 2022, when the application came up for hearing before me, the Respondent and or its Advocates failed to attend court.



5. I have perused the Affidavits of Service as filed. It is stated that the application dated 22nd March 2022 was served on the 21st June 2022, one day prior to the hearing date. The hearing notice is stated to have been served on the 23rd June, 2022, a day after the hearing of the application.
6. In both Affidavits of Service sworn by one James Gathuri Advocate for the Applicant, a copy of the hearing notice is not annexed, and the same applies for the application dated 22nd March, 2022.
7. The court is not satisfied that both the application and the hearing notice were served to the Respondent as that has not been demonstrated. Filing of the Affidavits of Service on their own are not proof of service. Evidence of service must be demonstrated, by acknowledgment of receipt by the Respondent, or if by email by annexing the email sent out to the Respondent, to show the date it was sent and received.
8. I therefore decline to hold that the Respondent was duly served with the said court documents.
9. To proceed to determine the application without the Respondent's participation would be locking out the Respondent from being heard, thus condemning it without an opportunity being given to Defendant itself.
10. For the said reasons, I direct that the Application dated 22nd March, 2022 be served afresh upon the Advocate for the Respondent together with a hearing notice, and a proper affidavit of service be filed, at least three days before the hearing date.
11. The application shall be listed for hearing on 15th November, 2022. The Applicant shall pay Court Adjournment Fees before the next court appearance.

DATED SIGNED AND DELIVERED THIS 28TH DAY OF JULY 2022.

J.N. MULWA

JUDGE

