



Conrad Maloba and Associates v Amershi; Dhanji (Proposed Interested Party) (Miscellaneous Application E114 of 2021) [2022] KEHC 11013 (KLR) (Family) (22 July 2022) (Ruling)

Neutral citation: [2022] KEHC 11013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E114 OF 2021
MA ODERO, J
JULY 22, 2022**

BETWEEN

CONRAD MALOBA AND ASSOCIATES APPLICANT

AND

SHAHNAZ AMIN AMERSHI RESPONDENT

AND

ALEYA RIYAZ TAJDIN DHANJI PROPOSED INTERESTED PARTY

RULING

1. Before this Court for determination is the Notice of Motion Application dated 15th September 2021 by which the Proposed Interested Party Aleya Riyaz Tajdin Dhanji seeks the following orders:-
 - “1. Spent.
 2. That this Honourable court be pleased to grant leave to the proposed Interested Party/Applicant to be enjoined in this application.
 3. That costs be in the cause.
2. The application which was premised upon sections 1A, 1B, 3A of the *Civil Procedure Act*, Order 1 Rules 10 (2), Rule 5 (1) of the *Civil Procedure Rules* 2010 and all other enabling provisions of law was supported by the Affidavit of even date sworn by the Interested Party.
3. The mother of the proposed Interested Party one Shamira Riyaz Tajdin Dhanji also filed a Further Affidavit dated 8th April 2022 in support of the application.



4. The applicant Conrad Maloba And Associates(herein after referred to as ‘the Advocates’) opposed the application through the Replying Affidavit dated 17th March 2022 sworn by Doreen Wamanga an Advocate of the High Court of Kenya practicing in the firm of Conrad Maloba and Associates
5. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated 14th April 2022, whilst the ‘Advocates’ relied upon their written submissions dated 16th May 2022.

Background

6. The Respondent herein Shahnaz Amin Amershi in her capacity as the Executor of the last will of the Deceased Riyaz T. Rahemtulla Dhanji engaged the law firm of Conrad Maloba and Associates to represent the estate in pursuing a Grant of probate in Succession Cause No. 1331 of 2016.
7. The Applicant herein is the sole beneficiary of the estate of the Deceased. She avers that it has come to her attention that the Advocates have filed a Bill of Costs against the Executor seeking payments for services rendered.
8. The Interested Party submits that it is only fair and just that she be enjoined as an Interested Party to enable her defend the Bill of Costs. She avers that her joinder will not be prejudicial to any party.
9. In opposing the application for joinder the Advocate confirms that the firm of Conrad Maloba and Associates did provide legal services and represented the Executor from 8th June 2017 in Succession Cause No. 1331 of 2016. That the Advocates represented the estate until 30th September 2020 when the Executor appointed a new firm of Advocates to act for the estate.
10. The Advocates insist that the contract in issue involved the Advocates and the Executor only. That the legal relationship established was between the Executor and the Advocate and did not involve the Interested Party who is a beneficiary of the Estate of the Deceased.
11. The Advocates oppose the joinder of the Applicant in these proceedings and assert that they did not receive any instructions at all from the said Applicant. That the costs are being sought from the Executor not from the Applicant and the Advocate-Client Bill of costs dated 15th May 2021 was served upon the Respondent as Executor of the estate.
12. The Advocate submits that there is no nexus between the distribution of the Estate and the Advocate/client relationship they had with the Executor. They urge the court to dismiss this application for joinder.

Analysis and Determination

13. I have considered the Notice of Motion dated 15th September 2021 the Replying Affidavit filed thereto as well as the submissions filed by both parties. The only issue for consideration is whether the Applicant should be enjoined as a party in the taxation of Advocate/client Bill of costs dated 15th May 2021.
14. The Applicant submits that the Executors instructions to the Advocate emanated from her appointment as the Executor of the estate of the Deceased. That given that the costs will be payable from the estate of which the Applicant is a sole beneficiary then she ought to be granted audience to enable her bring all relevant information to the attention of the Taxing Master. That the Advocate stands to suffer no prejudice if the Interested Party was enjoined in the matter.



15. The Advocate insisted that they were entitled to claim legal fees in respect of services rendered. The Advocate submitted that their contract was with the Executor and not with the Applicant. That the Applicant had not met the required threshold for joinder.
16. The Advocate submitted that the law of Succession clearly provided for how debts incurred by an estate were to be dealt with and there was no need for a beneficiary to participate in the taxation proceedings. The Advocate urged the court to dismiss the application.
17. Generally courts have in their discretion permitted parties who have sufficient interest in a matter to be enjoined as Interested Parties.
18. It is common ground and is conceded by the Applicant that the Executor did instruct the Advocates to act for the estate of the Deceased in Succession Cause No. 1331 of 2016. The Advocates acted as instructed from 8th June 2017 to 11th May 2020. From 30th September 2020 the Advocates had no further dealings with the estate.
19. It is also not in dispute that the Advocates have filed an Advocate-client Bill of Costs dated 15th May 2021 against the Executor. In said Bill of Costs the Advocates claim legal fees in the amount of Kshs 35,241,141.00 for services rendered.
20. It is trite that there exists privity of contract between the parties to a contract. In [*Aineah Liluyani Njirah Vs Agba Khan Helath Services*](#)[2013 eKLR it was held that -

“Privity of contract is a long-established part of the law of contract.....the essence of the privity rule is that only the people who actually negotiated a contract (who are privy to it) are entitled to enforce its terms.”
21. There can be no doubt that the contract in issue involved the Advocates and the Executors only. The Applicant though a beneficiary to the estate was not a party to the contract nor is there any evidence that the Applicant issued any instructions to the Advocates. It is manifest that it was the Executor who instructed the Advocates. The Bill of costs arise from the contract between the Executor on the one hand and the Advocates on the other. The Applicant had no contractual relationship with the Advocate.
22. However there can be no doubt that the legal services provided by the Advocate were for the benefit of the estate not the Executor personally. The Applicant as the sole beneficiary of the Estate has sufficient stake in the matter.
23. The next question is whether the Applicant has met the threshold to be enjoined in the ongoing proceedings. In the case of [*Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others*](#) [2014] eKLR the Supreme Court of Kenya stated as follows: -

“Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab ignitio. He or she is one who will be affected by the decision of the court when it is made either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.” (own emphasis)



24. In the case of *Francis Kariuki Muruatetu & Another vs Republic* [2016] eKLR, Supreme Court of Kenya set out the requirements one must meet to be enjoined in a suit as an Interested party as follows:-

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

25. Section 83 (a) of the *Law of Succession Act* provides that one of the duties of a personal representative of an estate is

“To pay out of the estate of the deceased, all expenses of obtaining their grant of representation and all other reasonable expenses of administration (including estate duty if any)” [own emphasis].

26. It is manifest therefore that the Executor will be obliged to pay out the legal costs due to the Advocate from estate funds. The Applicant is the sole beneficiary of the estate and as such has a beneficial interest over the assets (including funds) of the estate. In the circumstances her interest is proximate and cannot be dismissed as a mere cursory interest.

27. The Advocate has submitted that the Applicant does not stand to suffer any prejudice if she is not enjoined in the matter. I do not agree. As stated earlier the legal fees due to the Advocate will be paid out of the estate to which she is the sole beneficiary. If fees are excessive then this will have a direct bearing on the inheritance due to the Applicant. On the other hand, I fail to see what prejudice the Advocate would suffer if the Applicant is enjoined.

28. The Applicant argues that she has useful information to tender which information will assist the Taxing Master reach a just decision. The Applicant alleges that there has been a lack of accountability regarding aspects of the legal fees being claimed. These are in my view pertinent issues, which ought to be placed before the taxing master for consideration.

29. All in all, I find that this application for enjoinder is merited. Accordingly I make the following orders:-

1. Leave be and is hereby granted to the Proposed Interested Party Aleya Riyaz Tajdin Dhanjito be enjoined as an Interested Party to the Advocate-Client Bill of Costs dated 15th May 2021.
2. Costs be in the cause.

DATED IN NAIROBI THIS 22ND DAY OF JULY 2022.

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MAUREEN A. ODERO

JUDGE

