



Nigel Wesutza Kundu t/a KN Wesutza & Company, Advocates v Ochenyo (Miscellaneous Civil Application E015 of 2021) [2022] KEHC 13427 (KLR) (23 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION E015 OF 2021
WM MUSYOKA, J
SEPTEMBER 23, 2022**

BETWEEN

**NIGEL WESUTSA KUNDU T/A KN WESUTSA & COMPANY,
ADVOCATES APPLICANT**

AND

LUCAS AHULA OCHENYO RESPONDENT

RULING

1. The applicant filed an advocate/client bill of costs dated February 22, 2021 against the respondent. The respondent filed a replying affidavit sworn on March 9, 2021, saying that the applicant had no instructions to act for him. When the matter was placed before the taxing officer, Hon JN Maragia, the deputy registrar, she declined, in a ruling delivered on May 26, 2021, dated May 12, 2021, to tax the bill, on grounds that she had no jurisdiction to determine the question as to whether the applicant had acted with instructions, and referred the matter to the judge, for determination of that question, hence this ruling.
2. After the matter was placed before me, I called for the trial file in Kakamega CMCCC No 203 of 2015, for perusal, to acquaint myself with the pleadings, and the proceedings that were conducted before the trial court. The file was availed and I have perused it.
3. The plaint herein was drawn by the applicant. The verifying affidavit was drawn by the applicant, and was sworn by the respondent. The list of witnesses in support of the plaint, lists only one witness, Lucas Ahula Ocheyo, and is drawn by the applicant. The witness statement is signed by the respondent, and cross-signed by the applicant. The list of documents in support of the plaint is also drawn by the applicant. I have also seen a motion, dated May 15, 2015, drawn by the applicant, and it is supported by an affidavit sworn by the respondent.



4. The matter proceeded for hearing on August 15, 2018. The respondent was in attendance. The advocate who appeared and conducted the matter on his behalf was a Miss Atieno, who held brief for a Ms Oduor, advocate, who I suppose was from the office of the applicant. The respondent was put in the witness box, and was led in evidence by Ms Atieno, and the prosecution closed. Judgment was delivered on November 28, 2018, in the presence of Ms Oduor, advocate.
5. The impression that I get, from my perusal of the trial record, is that the applicant and the respondent walked together from the time pleadings were drawn to the time judgment was delivered, for if there were no instructions, the respondent would have either withdrawn the suit, or filed a change of advocates. I am not persuaded that the applicant did not have instructions to act for the respondent in this matter. In his own admission, in his affidavit sworn on March 9, 2021, he did pay moneys to the applicant, meant to be legal fees. He could not have made those payments if there was no engagement between him and the applicant. Whether those payments were adequate to clear advocates fees is another matter, for resolution by the taxing officer.
6. I, therefore, hold and find that the applicant had instructions to act for the respondent. I shall accordingly remit the bill of costs, dated February 22, 2021, to the taxing officer, for taxation. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 23RD DAY OF SEPTEMBER 2022

WM MUSYOKA

JUDGE

Erick Zalo, court assistant

Ms Nafuye, instructed by KN Wesutsa & Company, Advocates, for the applicant.

Mr Acherero, instructed by Acherero Mufuayia & Company, Advocates, for the respondent.

