



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

MISCELLANEOUS APPLICATION NO.236 OF 2019

DI LORENZO LIMITED.....APPLICANT/RESPONDENT

-VERSUS-

HASSAN BULLE & COMPANY ADVOCATES....RESPONDENT/APPLICANT

RULING

INTRODUCTION

1. Through the Bill of Costs (BOC) dated 17th July 2019, the applicant herein, Hassan Bulle & Company Advocates, seeks payment for legal services that they allegedly rendered to the respondent, instructions Di Lorenzo Ltd. On its part, the respondent objected to the said Bill of Cost through a Notice of Preliminary Objection dated 21st August wherein it listed the following grounds:

- 1. The Taxing Officer does not have jurisdiction to hear this matter.***
- 2. There exists no advocate –client relationship between the parties and therefore the applicant has no standing to introduce this matter.***
- 3. Due to the nature of the matter and the fact that there existed no advocate –client relationship, this matter is better suited to be determined by the High Court which would be the relevant forum.***

2. The applicant filed Grounds of Opposition (dated 28th August 2019) to the respondents Notice of Preliminary Objection wherein he listed the following grounds.

- 1. That the said Notice of Preliminary Objection is unmerited and misconceived.***
- 2. That it has been brought maliciously to cause unreasonable delay to the existing bill of cost.***
- 3. That the applicant and the respondent had an advocate-client relationship.***
- 4. That the Taxing Officer has jurisdiction to hear and determine this matter.***
- 5. That consequently, the Notice of Preliminary Objection is an abuse of the process of this honourable court and should be dismissed.***

Application.

3. The respondent also filed an application dated 23rd August 2019 seeking the following orders:

- 1. This application be heard in limine and be determined before the application to tax the bill of cost.***
- 2. There was no advocate –client relationship between the parties within the meaning of the Bill of Cost provided.***
- 3. The Bill of Cost be struck out in toto as the same has no grounds and is therefore erroneously before this court.***

4. Any other order this honourable court deem just and fit to provide.

5. Costs to be provided for.

4. The application is supported by the affidavit of the respondent's Managing Director **Mr. Micael Di Lorenzo** and is premised on the grounds that: -

1. *That matter above assumes an advocate-client relationship where there is none and therefore there is no standing to bring forward this matter.*

2. *The advocate has failed to show having received instructions from the applicant and has also failed to show any advocate client relationship.*

3. *That any relationship between the applicant and the advocate was contingent on the advocate providing for an estimated legal charge, something the advocate failed to provide.*

4. *The advocate is therefore before this court with unclean hands having failed to inform the Honourable Court of the whole event giving rise to this application.*

5. *The honourable court should not entertain the application to tax the Bill of Costs as the same is abhorrent having been brought to extort the applicant off of his hard earned money.*

5. The Applicant/Advocate opposed the application through the replying affidavit of **Mr. Mohammed Bulle Ahmed** dated 28th August 2019 and 26th November 2019 wherein he avers that the allegation that there was no client/advocate relationship between the parties is not true as the respondent visited the advocate offices on 27th March 2019 in pursuit of legal services and that after consultations, he instructed the advocate to draft an Equity Investment Agreement involving a sum of USD 4,000,000.

6. He states that the respondent also instructed him to prepare share transfer documents as well as certificate on transfer of certain marketable securities. He attached annexure "**MB A1**" to the replying affidavit being copies showing instructions when the respondent visited the advocates offices. He further states that the respondent was all along aware of the actions taken by the advocate in relation to this matter.

7. He further avers that the respondent is acting in bad faith by denying the existence of the advocate/client relationship and that the Advocates Remuneration Order (ARO) confers jurisdiction on the Taxing Officer to tax the Bill of Costs (BOC).

8. Parties filed written submissions to the application which I have carefully considered. The main issue that falls for determination is whether there existed a valid Advocate/Client relationship between the applicant and the respondent.

9. It was respondent's position that the Advocate/Applicant acted without the respondent's instructions, in which case, there was no advocate/client relationship between the parties so as to warrant the filing of the Advocate Client Bill of Costs. It was further argued that in the circumstances of this case, the Taxing Officer lacks jurisdiction to tax the Bill of Costs. Reference was made to the decision in **Hezekiel Oira T/A Oira Advocate v Kenya Broadcasting Corporation** [2015] eKLR wherein it was held that the Taxing Master lacks jurisdiction where there is no advocate/client relationship.

10. It is the respondent's case that there was no evidence of retainer as the respondent is a company that is a separate legal entity from its directors and that the applicant required to demonstrate that the company made resolution to instruct the advocate in the matter.

11. On its part, the applicant argued that it had both written and verbal instructions to act for the respondent. The Applicant cited the decision in **Kopot & Company Advocates v Cornel Rasanga Amoth** [2017] eKLR for the argument that instructions given to an advocate need not be in writing.

12. I have perused the annexures presented by both parties in their respective pleadings. I note that it is not disputed that the respondent's Managing Director, **Mr. Micael Di Lorenzo**, visited the Applicant's law firm on certain dates. The point of departure, however, is the purpose of such visit as while the respondent claims that the purpose of the visit was merely to enquire, from the said advocates, how much they would charge for drafting the Equity Investment Agreement, the applicant maintained that they were issued with instructions to draft the said Equity Investment Agreement.

13. I have considered the thread of email communication between the parties produced by the respondent's deponent as annexures "**MDL1**" and "**MDL2**" and I note that in the email dated 4th January 2019, the applicant forwarded to the respondent drafts of the Equity Investment Agreement and Transfer of Shares document. In a subsequent email of 2nd April 2019, the applicant forwarded the Transfer of Shares documents to the respondent for their execution. In the respondents email dated 4th April, 2019, ("**MDL2**") however, they state that they only asked the applicant for their quotation and did not issue any instructions for any work.

14. In determining whether or not instructions were issued to the Applicant/Advocate herein to act in the matter and draft the subject documents, this court is minded to consider the law on how such instructions ought to be issued. I note that courts have taken position that instructions of a public authority or a company must be in writing. This was the position adopted in the case of **County Council of Bureti v Kennedy Nyamokeri t/a Nyamokeri & Company Advocates** [2006] eKLR wherein it was held that:

“It is imperative that instructions of a public authority be in writing just like in the case of a company or a public Corporation because such public authority can only act through its established organs.”

15. In the present case, it is not disputed that the respondent is a limited liability company in which case, written instructions to the applicant to act ought to have been made through the company’s board resolution or through written instructions signed by the Directors. I note that no such written instructions were presented by the applicant herein and my finding is that there was no proof that the respondent instructed the applicant to draft the instruments. I am further guided by the decision in *Re Desbro Engineering Ltd [2006] eKLR* wherein it was stated:

A limited liability company is a legal person in law and has separate legal existence. It may act through the medium of men such as the men/women that constitute the Board of Directors. When it does so evidence should be adduced to that effect.”

16. My further finding is that to the extent that applicant seeks legal fees in respect to the said drafted documents, no advocate/client relationship was established so as to warrant the taxation of the subject BOC. I also find that since it was not disputed that the respondent’s Managing Director visited the applicant’s offices ostensibly to consult them and enquire about their legal services, the applicant will be entitled to charge their fees limited to such consultation and attendance from Mr. Di Lorenzo in his individual capacity.

17. For the above reasons, I am unable to find that the applicant established that it had a client/advocate relationship with the respondent, I therefore allow the application dated 23rd August 2019 with no orders as to costs.

Dated, signed and delivered via Microsoft Teams at Nairobi this 29th day of May 2020 in view of the declaration of measures restricting court operations due to Coved -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Mohamed for Di Lorenzo Ltd Applicant/Respondent

Court Assistant; Sylvia