



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. APPLICATION NO. 220 OF 2016

GORDON OGOLA T/A GORDON OGOLA & ASSOCIATES.....APPLICANT

VERSUS

HEBBY ONDIEKI.....RESPONDENT

RULING

1. In this unusual case, Hebby Ondieki, the Respondent denies that she ever instructed the Advocate, Gordon Ogola T/A Gordon Ogola & Associates to act for her. As such, she says, Gordon Ogola has no business filing an Advocate-Client Bill of Costs against her. On her the Hebby's behalf, his new lawyers, Kiplenge & Kurgat Advocates have filed Grounds of Opposition and a lengthy affidavit. The effect of both is the same: That the Bill of Costs cannot be taxed because Hebby never instructed Gordon Ogola as her advocate.

2. When the matter came before me on 21/01/2019, both parties agreed that there was no need for submissions and that I could easily make a decision based on the Court records in High Court Civil Case No. 432 of 1999 (Hebby Ondieki v Barclays Bank (K) Ltd.)

3. From a perusal of the file, it appears that a plaint was filed on behalf of Hebby some time in 1999. It is dated 04/10/1999. After the case dragged on for a number of years, on 28/10/2008, the firm of Kiplenge & Ogola came on record on behalf of Hebby vide a Notice of Appointment of Advocates dated 23/10/2008 and filed in Court on 28/10/2008. Needless to say, at the time, Mr. Julius Kiplenge and Mr. Gordon Ogola were partners in the said firm.

4. The firm of Kiplenge & Ogola was dissolved on 01/05/2009. On 17/06/2009, Gordon Ogola & Associates (the Applicant) filed a Notice of Change of Advocates dated 12/05/2009. The Notice indicated that Gordon Ogola & Associates will henceforth act for Hebby in place of Kiplenge & Associates. Gordon Ogola & Associates wrote to Walker Kontos Advocates which was acting for the Defendants in the case a letter dated 03/09/2009 advising them of the dissolution of Kiplenge & Ogola Advocates and informing them of the Notice of Change of Advocates.

5. It would appear that the professional relationship between Gordon Ogola and Hebby did not blossom. This prompted Gordon Ogola & Associates to file an Application to cease acting for Hebby. The Application is dated 18/05/2012. There is no indication in the Court file that that Application was ever heard.

6. Instead what we have are two telling documents. The first one is a Notice to Act in Person by Hebby. It is dated on 10/02/2016 and filed on the same day. The second document is a letter by Hebby addressed to Gordon Ogola, Advocate. It is dated 14/04/2016 and a copy of it was filed in Court on the same day. That letter, after referring to various documents in the matter, ends thus:

This letter seeks that you please release forthwith immediately to me in person, the said same my file number Nakuru HCCC No. 432/1999 to enable and facilitate I respond to the Court of Appeal Civil Appeal number CA 107/2012.

Take Notice that of course you are at liberty to file and serve your bill of costs for taxation.

Justice be our shield and defender.

7. These two documents leave no doubt whatsoever that Hebby considered Gordon Ogola, Advocate to have been his advocate and acting for him in Nakuru HCCC No. 432 of 1999. Indeed, Hebby authorizes the advocate to fill his bill of costs for taxation. This is exactly what the advocate has done in this matter.

8. It follows that I find the Grounds of Opposition raised against the filed Bill of Costs to be entirely without merit. It is my express finding that Hebby did retain Gordon Ogola T/A Gordon Ogola & Associates to act for her in Nakuru HCCC No. 432 of 1999. The

Bill of Costs should, therefore, proceed for taxation.

9. The Advocate is awarded the costs associated with this opposition to the taxation.

10. Orders accordingly

Dated and delivered at Nakuru this 24th day of January, 2019

.....

JOEL NGUGI

JUDGE