



REPUBLIC OF KENYA



KENYA LAW
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Mugumya and Company Advocates v Kigen (Miscellaneous Application E004 of 2023) [2023] KEELC 20209 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20209 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
MISCELLANEOUS APPLICATION E004 OF 2023**

**EM WASHE, J
SEPTEMBER 20, 2023**

BETWEEN

MUGUMYA AND COMPANY ADVOCATES APPLICANT

AND

JUSTUS KIGEN RESPONDENT

RULING

1. The Respondent herein upon being served with a Bill of Costs dated 25th of April 2023 (hereinafter referred to as “the Bill of Costs”) filed Grounds of Opposition dated 10th of May 2023 challenging the taxation of entire Bill of Costs on the following grounds;-
 - i. That there was no advocate-client relationship between the Applicant and the Respondent herein and/or instructions which were issued by the Respondent to the Advocate/Applicant to act for him in the EIC Appeal No. 31 of 2021.
 - ii. That without prejudice to the foregoing, the Bill of Costs is exaggerated, not factual and the Respondent objects to all the items on the bill.
 - iii. That the instant bill of costs constitutes an egregious and fundamental abuse of the Honourable Court process.
 - iv. That the instant Bill of Costs is both frivolous and vexatious warranting its being struck out.
2. The Respondent on the other hand has opposed the Grounds of Opposition dated 10th May 2023 by filing a Replying Affidavit sworn on the 13th June 2023 to which he states as follows in summary;-
 - i. The Applicant has been the Respondent’s Counsel since the Lower Court proceedings known as MCI&E Case No.33 of 2019 when he was working for the firm of Messrs P.sang & Company, Advocates.



- ii. The due to the fact that the applicant was the one handling the respondent's brief in the firm of P.Sang & Company, Advocates, upon his departure from the said firm, he duly filed an notice of change of advocates on the 17th april 2023.
 - iii. The applicant has been handling the Respondent's proceedings at all times as confirmed by the telephone WhatsApp texts attached in the said Replying Affidavit.
3. This Honourable Court has indeed gone through the pleadings by the parties and the submissions thereof and the issue for determination is whether or not the Applicant had lawful and proper instructions to act for the Respondent.
 4. The proceedings that is the Applicant is seeking to tax is the Kilgoris Elc Appeal No.31 of 2021 (formerly Narok Elc No. 13 of 2020) which was subsequently withdrawn on the 18th of April 2023.
 5. The Applicant in the Replying Affidavit has attached two Notices Of Change of Advocates dated 29th July 2019 and another one dated 17th April 2023.
 6. The Applicant submission is that upon taking instructions from the firm of P.sang & Company, Advocates, all other proceedings were undertaken by the said firm and including the subsequent Appeal known as Kilgoris Elc Appeal No. 31 of 2021.
 7. In support of this position, the Applicant has attached various text messages with the Respondent to confirm the existence of the said instructions.
 8. As earlier stated, the question to be answered is whether or not the Applicant had instructions to file the said Notice of Changes and/or act for the Respondent.
 9. The Applicant in his Replying Affidavit filed herein has attached a Notice of Change of Advocates dated 29th July 2019 indicating that he took over the conduct of the said proceedings from the firm of P.sang & Company,advocates.
 10. However, this is not the true position because the Notice of Change dated 29th July, 2019 indicated that the Applicant was an associate of P.Sang & Company, Advocates only.
 11. Consequently, according to the Record of Appeal in Kilgoris Elc Appeal No. 31 of 2021, the Notice of Motion Application dated 30th July 2019 was signed by the Applicant in the following manner;-

“Rogers Mugumya
2019/05401
And Company
Advocates For The Plaintiff/applicant.”

12. Again in the Record of Appeal in Kilgoris Elc Appeal No.31 of 2021, this Honourable Court takes judicial notice that the Respondent herein filed written submissions in support of the Application filed on the 30th of July 2019 and the same were signed as follows;-

“Rogers Mugumya
And Company Advocates
Advocates For The Petitioner/applicants
2019/05401”



13. Clearly therefore, the firm that was on record on behalf of the Respondent was P.Sang & Company, Advocates way past 29th July 2019, a fact which was known to the Applicant who actually signed the pleadings under review.
14. The second Notice of Appointment dated 17th of April 2023 again produced by the Applicant as RM 2.
15. This second Notice of Appointment dated 17th of April 2023 purports to enable the Applicant firm to take over the proceedings in Kilgoris Principal Magistrate's Environment & Land Court Case No. 33 of 2019.
16. This second Notice of Change of Advocates does not contain a court stamp or supported with an official payment receipt confirming its filing.
17. Turning to the messages attached to the Replying Affidavit sworn by the Applicant, the Honourable Court has gone through the same and none of the messages authorise the Applicant to take over the matter from the firm of P.sang & Company, Advocates.
18. What the Respondent is discussing with the Applicant is whether there is a need to proceed with the Appeal or not.
19. The Respondent's position is that he is no longer interested in the said Appeal and is not willing to participate in the same.
20. Based on this position by the Respondent, the entire Appeal was subsequently withdrawn.
21. In essence therefore, this Honourable Court agrees with the Respondent that there were no instructions issued to the Applicant firm to act for him and the purported bill of costs dated 25th of April 2023 is unlawful and illegal.
22. In conclusion therefore, the Grounds of Opposition dated 10th May 2023 are merited and the Bill of Costs dated 25th of April 2023 against the Respondent is hereby struck out with costs in favour of the Respondent.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 20TH SEPTEMBER 2023.

EMMANUEL.M.WASHE

JUDGE

