



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Miscellaneous Application 342 of 2008

NJUGUNA & PARTNERS ADVOCATES.....ADVOCATES/RESPONDENT

VERSUS

JANE WAMBUI WAITHAKA..... CLIENT/APPLICANT

AND

ANDREW MWANIKI GACHOKA

(t/a GACHOKA & CO ADVOCATES).....INTENDED RESPONDENT

R U L I N G

1. This is an application by **notice of motion dated 5th March 2012**) by the Client, JANE WAMBUI WAITHAKA, for joinder of ANDREW MWANIKI GACHOKA (t/a GACHOKA & CO., ADVOCATES in these proceedings.

2. The original matter herein was an advocate/client taxation between the Advocate, NJUGUNA & PARTNERS, ADVOCATES and the Client. The Advocate's bill of costs dated 7th May 2008 was on 17th October 2008 taxed at KShs 220,589/00 and certificate of taxation issued on 2nd February 2009. The taxation was *ex parte*, but the taxing officer was on 18th September 2008 informed that the Client had been served.

3. The Advocate subsequently applied by notice of motion dated 11th February 2009 for judgment to be entered for the taxed costs under **section 51(2) of the Advocates Act, Cap 16**. This application was allowed on 3rd November 2009. The Client was then represented by counsel. Decree later issued.

4. On 15th June 2011 the Advocate sought execution of the decree.

5. On 22nd July 2011 the Client filed notice of motion dated 22nd July 2011 seeking the main order that the order of 3rd November (erroneously stated as October) by which judgment upon the taxed costs was entered be reviewed and set aside or varied. This application is yet to be prosecuted.

6. The Client then filed the present application by notice of motion dated 5th March 2012.

7. The main ground for the application is that the Client never instructed the Advocate to act for her in **Nairobi HCCC No 572 of 2003**, and that if there were such instructions they were given by the Intended 2nd Respondent who should be responsible for the Advocate's costs. In other words the Client disputes retainer to the Advocate.

8. The Advocate does not oppose the application, but the Intended 2nd Respondent, who is an advocate of this court, has opposed the application. He filed grounds of opposition dated 11th June 2012 and a replying affidavit (filed on 11th July 2012). The points taken include-

(i) That he has been mis-described in the name, though he acknowledges that he is the Intended 2nd Respondent.

(ii) That the application does not lie in law and offends unstated provisions of the Advocates Act and the Advocates (Remuneration) Order.

(ii) That the application lacks merit and is an abuse of the process of the court.

9. I have considered the submissions of the learned counsels appearing. The issue of retainer should have been raised by the Client at the time of taxation, and failing that, latest at the time the application for entry of judgment upon the taxed costs was canvassed.

10. Regarding the taxation, the record of the court discloses that the taxing officer was informed that the Client had been duly served. If that was so, it would appear that the Client failed to attend the taxation to make necessary representations there.

11. The record of the court shows that the Client was represented by counsel when the court considered the application on 3rd November 2009 and entered judgment. That was another opportunity that the Client could have used to raise the issue of retainer.

12. To now seek to join another person in a matter that is now between her and the Advocate is to seek to raise the very same issue of retainer that should have been raised at the two opportunities already mentioned. It is my considered view that it is now too late to raise the issue of retainer.

13. Having considered the notice of motion dated 5th March 2012, I am not satisfied that it has any merit. It is hereby dismissed with costs. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF APRIL 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 3RD DAY OF MAY 2013