



REPUBLIC OF KENYA



KENYA LAW
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**Kiunjuri v Waithaka & 2 others (Appeal 17 of 2020)
[2022] KEELC 2256 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2256 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
APPEAL 17 OF 2020
LN GACHERU, J
MAY 19, 2022**

BETWEEN

KIHARA KIUNJURI APPELLANT

AND

HARRISON MACHARIA WAITHAKA 1ST RESPONDENT

JAMES MAHINGE MWANGI 2ND RESPONDENT

WANGENYE KURIA 3RD RESPONDENT

RULING

1. The Respondents filed 3 separate Bills of Costs dated 7th December 2021, as against the Appellant. The Appellant filed a Notice of Preliminary Objection dated 18th January 2022, objecting to the Bill of Costs on the basis that the Respondents cannot lawfully file separate Bills of Costs.
2. The Preliminary Objection was canvassed with by way of written submissions and the Appellant through the Law Firm of Ndumu Kimani & Company Advocates, filed his submissions dated 9th February 2022, and submitted that the Respondents were sued as joint owners, they instructed one Firm of Advocates and filed joint Statement of Defence and called one of them to testify on their behalf at the Principal Magistrate's Court at Kangema. Further that at Appeal stage, they also instructed one Firm of Advocates and the prosecution of the Appeal was done jointly and the Appellant could not have been reasonably expected to leave out some of the joint owners from the proceedings. It was further submitted that there were no separate causes of action against the Respondents, and the successful party should not make a profit and that costs are to reimburse the successful party. That allowing separate Bills of Costs would amount to an injustice as there is nothing to suggest that Counsel for the Respondents prepared separately for each of them.
3. The Respondents through the Law Firm of J.N Mbutia & Company Advocates filed their written submissions dated 26th February 2022, and submitted that a Defendant can wholly or partially adopt



the Defence of another and that the Bill of Costs are in strict compliance with the provisions of law as the Preliminary Objection is opposed on the basis of Schedule 6(6) (1) of the [Advocates \(Remuneration \(Order 2014\)\)](#) and that a Defendant can partially or wholly adopt the Defence of another person, and that the Bills of Costs are in strict compliance with the provisions of the law.

4. Having carefully read and considered the Preliminary Objection and the written submissions, the Court finds that the issue for determination is whether the Preliminary Objection is merited.
5. A valid preliminary objection must be on a pure point of law. The case of [Mukisa Biscuit Manufacturing Co. Ltd ...Vs...West End Distributors Ltd](#) (1969) EA 696, is the locus classicus on preliminary objections. On What constitutes a Preliminary Objections, it was held as follows:-

“a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

6. The Appellant/ Applicant has contended that the Respondents could not lawfully file three separate Bills of Costs. The Court finds and holds that the instant Preliminary Objection raises a pure point of law, as the issue on whether or not the three separate Bills of Costs could be filed, may dispose off the said Bill of Costs and there is no ascertainment of facts that is required in order for the Court to come to a determination.
7. The Court has carefully perused the Court proceedings, and it is not in doubt that the Respondents were represented by the same advocates and further that only one set of pleadings were filed. The Respondents have not satisfied the Court that there was any need to file separate pleadings. The submissions by the Respondents that one Defendant could adopt the Defence of another is not applicable in this case, at it is not in doubt that the Defendants did not adopt each other Defence, but rather they were represented by the same Advocates and defended themselves using the same set of facts.
8. Rule 62 of The [Advocates \(Fees For Restoration To The Roll\) Regulations](#), 1962 provide that;
 62. Where the same advocate is employed for two or more plaintiffs or defendants, and separate pleadings are delivered or other proceedings had by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of such advocate’s bill of costs, either between party and party or between advocate and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby have been unnecessarily or improperly incurred, the same shall be disallowed.
9. Further in the case of [Desai Sarvia & Pallan Advocates v Tausi Assurance Company Limited](#) [2015] eKLR. the Court held that;

“In the instant case, it is not disputed that the Applicant was all at once instructed by the Respondent to act for both Defendants. It is not also disputed that the Applicant herein as a result filed one set of pleadings to defend both Defendants. In the view and finding of the court the instructions fees can only be claimed in respect of only that one set of proceedings.



The Taxing Officer therefore, correctly exercised his discretion under Rule 62 by disallowing the second Bill of Costs, since it was unnecessary and unjustified. In the circumstances, this appeal has no merit and is hereby dismissed with costs. Orders accordingly.

10. Having found that there was one set of pleadings by the same Advocates, the Court is not satisfied that any valid explanation has been provided to justify the filing of three separate Bills of Costs, while only one set of pleadings were necessary and had been filed. Consequently, the Court finds and holds that the Preliminary Objection is merited and the same is upheld with cost to the Appellant/Objector.
11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19TH DAY OF MAY, 2022.

L. GACHERU

JUDGE

Delivered virtually

In the presence of;

Alex Mugo - Court Assistant

No Appearance for the Appellant/Objector

No Appearance for the Respondent

L. GACHERU

JUDGE

