



B.M Mung'ata & Co. Advocates v Seke (Environment and Land Miscellaneous Application 6 of 2021) [2022] KEELC 12776 (KLR) (28 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12776 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 6 OF 2021
CA OCHIENG, J
SEPTEMBER 28, 2022
IN THE MATTER OF ADVOCATE-CLIENT BILL OF COSTS**

BETWEEN

B.M MUNG'ATA & CO. ADVOCATES APPLICANT

AND

SAMUEL SEKE RESPONDENT

RULING

1. What is before Court for determination is the Respondent's Notice of Preliminary Objection dated the November 7, 2021 where he objects to the taxation of the Applicant/Advocate-Client Bill of Costs dated the July 14, 2021. The said Notice of Preliminary Objection is premised on the following grounds:
 - a) The Deputy Registrar is divested of the requisite jurisdiction to tax the Advocate-Client Bill of Costs dated July 14, 2021 in view of the fact that the firm of B.M Mung'ata & Company Advocates is still on record in respect of the matter in which the Bill was filed.
 - b) The Advocate-Client Bill of costs dated July 14, 2021 is pre-mature and an illegality.

The Application was canvassed by way of written submissions.

Submissions

2. The Respondent submitted that it was not in dispute that the firm of Messrs B.M. Mung'ata & Company Advocates was still legally on record for him, in the suit in which the impugned Advocate-Client Bill of Costs dated the July 14, 2021 emanated from, since they have never sought leave to successfully cease acting for him. He urged the court to find the Advocate-Client Bill of Costs filed herein as premature and prayed that the same be struck out with costs. To support his arguments, he



relied on the case of Misc. Application No. 625 of 2009 *Gichuki King'ara & Co. Advocates v Mugoya Construction & Engineering Limited*.

3. The Applicant submitted that the Respondent had instructed the firm of Messrs B.M Mung'ata & Company Advocates to conduct his Defence and they filed a Memorandum of Appearance including Defence on his behalf but before the matter was finalized, there was a fallout between them culminating in their filing the impugned Bill of Costs as well as application to cease acting for him. To buttress its averments, it relied on following decisions: *Mukhisa Biscuits Manufacturing Co. Ltd v West End Distributors* [1969] EA 696 and *Tom Ojienda & Associates v Mumias Sugar Company Limited* (2019) eKLR.

Analysis and Determination

4. Upon consideration of the instant Notice of Preliminary Objection including the rivalling submissions, the only issue for determination is whether the Advocate-Client Bill of Costs dated the July 14, 2021 should be struck out.
5. The Respondent claims the Advocate-Client Bill of Costs is premature as the Applicant is still on record for him. The Applicant insists the Respondent withdrew instructions from them culminating in their filing an application to cease acting including the impugned Bill of Costs. Further, when the Respondent was served with the said Bill of Costs, he instructed another advocate to act for him.
6. It is trite that an advocate who has been instructed to act for a client has a legitimate expectation that his/her legal fees, will be paid by the said client whether or not, their relationship is severed.
7. In the case of *Mumias Sugar Company Limited v Tom Ojienda & Associates* [2019] eKLR, the Hon. Justice Fred Ochieng (as he then was) held that:

“...there is no law that expressly prohibits an advocate from lodging his Advocate/Client Bill of Costs for taxation before either the task is completed or before the advocate ceases to act for the client...”
8. Similarly, in the case of *Tom Ojienda & Associates v Mumias Sugar Company Limited & another* [2018] eKLR the Hon (Rtd) Justice Makau observed inter alia;

“...as I have already stated under paragraph 13 of the Advocates (Remuneration) order 2009 nothing bars the taxing officer from taxing costs as between Advocate and client upon an application being filed before Deputy Registrar. I find that even where an advocate has not ceased from acting a taxation of costs can be done on an application by either the advocate or the client in a miscellaneous cause...”
9. See also the decision in *Mwangi Kengara & Company Advocates v Invesco Assurance & Company Limited* [2014] eKLR.
10. It is my considered view that it would be unfair and unjust to deny an advocate his right to seek for legal fees for work done. An advocate is entitled to pursue for his/her legal fees from an erstwhile client even after ceasing to act for that particular client. Further, there is no law that expressly prohibits an advocate from lodging his Advocate/Client Bill of Costs for taxation before the task is completed or before he ceases to act for the said client.
11. Based on the facts as presented while noting that a Preliminary Objection should not be based on facts to be ascertained but pure points of law and in associating myself with the decisions cited above, I find the instant Notice of Preliminary of Objection is premature and will dismiss it.



Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 28TH DAY OF
SEPTEMBER, 2022**

CHRISTINE OCHIENG

JUDGE

