

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Civil Misc 3 of 2006

**IN THE MATTER OF ADVOCATES ACT, CAP 16, OF THE LAWS OF
KENYA**

IN THE MATTER OF ADVOCATES-CLIENT COSTS

C. MWANGI GACHICHIO ADVOCATE/APPLICANT

VERSUS

1. WEST END BUTCHERY LTD.

2. MOHAMED JUMA ALLARAKHA....CLIENTS/RESPONDENT

AND

Civil Suit 108 of 2002 (O.S.)

1. MOHAMED ABDI ROBA

2. IBRAHIM LEMARIN PLAINTIFFS

VERSUS

1. WEST-END BUTCHERY LTD

2. MOHAMED JUMA DEFENDANTS

R U L I N G

This application was filed in this court on 11/3/06. It seeks that an advocate-client bill of costs due for taxation in this court, be transferred to Nairobi High Court to be consolidated with a similar bill under Nairobi Misc. Civil Application No. 78 of 2006 so that taxation can be done together and simultaneously.

The reasons given for this sought course, are that the parties in both main suits i.e. Civil Suit No. 108 of 2002 (O.S.) Machakos and Civil Suit No. 1540 of 2002 (O.S) Nairobi relate to the same parties and that the subject matter, a piece of land – L.R. Nairobi No. 7149/10, is the same that is in dispute in both cases. It is also made clear, that the applicant in the bill for taxation, Mr Charles Mwangi Gachichio, acted for the applicants herein in both suits, apparently very successfully before a client-advocate dispute arose between him and the applicants. It is not an issue that the said dispute between the advocate and his clients, relates to the fact that his bill of costs arising from the two suits, apparently alarmed them for its allegedly, large size. To stave off the alarming bill the applicants herein returned to their present advocate, Mr M.A. Khan, to protect them probably because, in the original matters, Mr Khan acted jointly with Mr Gachichio Advocate, the respondent herein. It may there be noticed in passing, that Mr M.A. Khan, is effectively acting as an advocate, against Mr Gachichio, in the same suits in which both earlier

acted for the applicant.

What is more relevant for the purpose of this case, however, is that the Nairobi Civil Suit No. 1540 of 2002 (O.S.) and Machakos Civil Suit No. 108 of 2002 (O.S.), were concluded normally, even though by voluntary withdrawal with orders for costs being made, apparently in favour of the applicants herein. It would therefore be presumed that whether the advocates acting for the parties in those suits would be entitled to advocate-client costs and how much such costs would be, is an issue to be decided by the courts that handled the suits, unless there are persuading grounds to think and hold otherwise.

Mr Khan argued that the bill of costs in Machakos High Court Misc. Application No. 3 of 2006 should be transferred to Nairobi High Court to be consolidated with a bill in the Nairobi High Court Misc. Application No. 78 of 2006. He stated that the parties are the same and the subject matter is the same and that it would be fair to have two bills taxed by the same court to avoid either court granting the advocate in either suit costs that are higher than what he would be entitled.

I have considered carefully all the grounds advanced by counsel on both sides of the issue before the court. There is no doubt that either suit was pursued and finalized independently by two different courts, one being at Machakos and the other in Nairobi. It is not denied either, that either bill of costs will be based on the services rendered in respect to either suit. Nor did I hear Mr Khan stating that either court, as manned by a qualified tax master, cannot competently handle and tax the bill of costs before it. That the parties in each suit are the same, if they are indeed the same, is definitely a coincidence and has, in my view, no legal significance. It would be expected, in the normal circumstances of each suit, therefore, that the Taxing Master, will be fair and just. If the applicants have any reasonable or probable grounds to doubt either Taxing Master, they were at liberty to swear such grounds. They however did not do so, confirming the fact that they have no reason to fear.

On the other hand, no acceptable legal grounds were proffered by the applicants as to why there should be consolidation of two suits whose issues may be different and which suits are already finally determined. In my opinion and decision, fear of the courts taxing the bills at a higher level, is not a legal or reasonable ground upon which this court can act, especially when the basis of such fear, has not been proved or even advanced on reasonable grounds. Furthermore, this court, has earlier mentioned that the main ground upon which this application is based, i.e. that the separate court will not be fair in taxing the respondent's costs in either suit – undermines or goes to undermine the competence or integrity of the said courts in so far as they assert that the courts will not be fair and just without assigning acceptable or meritorious reasons. This approach cannot be encouraged as it goes a long way to unreasonably or unnecessarily question the integrity and dignity of our court system.

Upon the above reasons this court finds this application unmeritorious and dismisses it with costs to the respondent. It is so ordered.

Dated and delivered at Machakos on the 28th day of September, 2006.

D.A. ONYANCHA

JUDGE