



REPUBLIC OF KENYA



KENYA LAW
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**Njeru, Nyaga & Co. Advocates LLP v Muriuki (Environment & Land Miscellaneous
Case E065 of 2020) [2024] KEELC 541 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 541 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E065 OF 2020
EK WABWOTO, J
FEBRUARY 8, 2024**

BETWEEN

NJERU, NYAGA & CO. ADVOCATES LLP ADVOCATE

AND

ERASTUS THORONJO MURIUKI CLIENT

RULING

1. This ruling is in respect to the Advocate/Applicant's Chamber Summons application dated 5th April 2023. The application was accompanied by a supporting affidavit sworn by Martin Njeru Nyaga where the Applicant sought the following orders:
 - i. That this Honourable Court be pleased to grant leave to appeal against the ruling dated May 5, 2022.
 - ii. That costs of the application be provided for.
2. The Application was premised on two grounds;
 - i. That the Applicant's reference dated 13th October 2021 was wholly dismissed on 5th May 2022 by Hon Justice Wabwoto based on misapprehension of the nature and scope of retainerhsip fees which is an issue of general importance and ought to be settled finally.
 - ii. That the reference was based on a ruling delivered on 19th August 2021 dismissing the bill of costs dated 11th March 2020 in its entirety and raised constitutional issues.
3. The application was canvassed by way of written submissions pursuant to the directions issued by this court.
4. In submissions dated 21st November 2023, the Advocate submitted that the judge erred in fact and principle by failing to differentiate retainer fees from legal fees. Moreover, it was submitted that the



delay in filing this application was due to delays in the registry for which the Advocate ought not to suffer.

5. The Client opposed the application vide a replying affidavit sworn by Erastus Muriuki Thoronjo dated 1st August 2023. It was averred that no errors had been made in Hon Orago's ruling on taxation nor Justice Wabwoto's reference ruling. It was also submitted that the Advocate did not finish the work and in fact owed the Client approximately Kshs 70,000.
6. Having considered the application, parties' written submissions, authorities filed, it is clear that the sole issue for determination is whether the Court should exercise its discretion favourable and consequently grant leave for filing of the appeal against the ruling delivered on 5th May 2022.
7. Our Constitution in Article 50 as read with Article 159 of *the Constitution* heavily emphasizes every person's right to fair hearing before an impartial body and free from undue technicality. The Court has also had a chance to look at the draft memorandum of appeal annexed to the application and the grounds set out therein and it is of the considered view that the applicant should not be denied access to the seat of justice. There is also no demonstration that the Respondent will suffer prejudice if the Applicant is allowed to exercise its right to appeal.
8. It is on this premise that the Court will allow the Chamber Summons application dated 5th April 2023 under the following terms:
 - i. Leave is hereby granted to the Applicant to file an appeal against the ruling dated 5th May 2022 within 14 days of delivery of this ruling.
 - ii. The applicant to compile, file and serve the record of appeal within 30 days from the date hereof.
 - iii. In default of compliance to (i) and (ii) above, the orders issued herein shall automatically lapse.
 - iv. Each party shall bear own costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF FEBRUARY 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

N/A for the Advocate/Applicant.

N/A for the Client/Respondent.

Court Assistant; Caroline Nafuna.

