



**Anthony Thuo Kanai T/A A.Thuo Kanai Advocates v Golf Fairways Limited & another (Environment and Land Miscellaneous Application 183 of 2018) [2023] KEELC 555 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 555 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 183 OF 2018  
EK WABWOTO, J  
FEBRUARY 2, 2023**

**BETWEEN**

**ANTHONY THUO KANAI T/A A.THUO KANAI ADVOCATES .... APPLICANT**

**AND**

**GOLF FAIRWAYS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**INDER JIT TALWAR ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed a reference *vide* a chamber summons application dated May 31, 2022 which was accompanied by a supporting affidavit sworn by Anthony Thuo Kanai Advocate wherein the following orders have been sought;
  - a. That this honourable court be pleased to vary and/or set aside the taxing officer's ruling dated March 24, 2022 in relation to retainer relationship between the applicant and the Respondents by finding that there existed a retainer relationship between the parties and reinstating the applicant's bill of costs dated October 19, 2018.
  - b. That this honourable court be pleased to order the bill of costs dated October 19, 2018 to be taxed/assessed before any other Taxing Officer/Deputy Registrar other than Hon I. Barasa.
  - c. That the costs of this application be provided for
2. The application was premised on the grounds that:
  - i. The Taxing Officer erred in law and fact when she deliberately disregarded the contents of the email dated September 3, 2012 authored and send by Mr Inder J Talwar who is the 2<sup>nd</sup> respondent herein giving the applicant instructions to prepare and register the Transfer in



respect of the properties known as 8478 and 8749 to Golf Fairways Ltd, the 1<sup>st</sup> Respondent, whereby the latter is the subject of the bill of costs herein

- ii. The Taxing Officer erred in principle by giving undue weight to the email addresses of the parties and the title of the author rather than the instructions contained in the email which were addressed to the applicant whose full names appear in the email to prepare the Transfer in respect of the property subject matter of the bill of costs and to the 1<sup>st</sup> respondent.
  - iii. That further the Taxing Officer erred in law and fact by suo moto raising issues regarding the address and title of the author of the email dated September 3, 2012 in the ruling which were not issues raised by the Respondents nor controverted without affording the Applicant and opportunity to be heard on the said issue on which her ruling is anchored.
3. In submissions dated November 11, 2022, the applicant averred that a retainer relationship was evidenced in the email dated September 3, 2022 where the 2<sup>nd</sup> respondent instructed the applicant to incorporate the 1<sup>st</sup> respondent company. Moreover, it was reiterated that the 2<sup>nd</sup> respondent as Chairman of Cannon Assurance habitually gave instructions to the applicant during his term as Manager for Legal Affairs.
  4. The application was opposed in the respondents' submissions dated October 17, 2022 in which it was reiterated that the respondents were not clients of the applicant. It was further averred that following the decisions of the Taxing Officer the court would lack jurisdiction to hear or determine the matter.
  5. Having considered the submissions, evidence and supporting documents, it is clear that the issue for determination is whether there was a retainer relationship between the parties herein.
  6. Section 2 of the [Advocates Act](#) which defines a "client" to include: -

"Any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity has power express or implied, to retain or employ, and retains or employs or is about to retain or employ an advocate and any person who is or may be liable to pay to an advocate any costs."
  7. In [Oriental Commercial Bank Limited v Central Bank Of Kenya](#) [2012] eKLR, the court reiterated the scope under which an advocate-client relationship can be defined.

"...A client-advocate relationship arises when a client retains an Advocate to offer legal services specifically or generally. In [Blacks Law Dictionary, 6th Edition, 1990](#), the word retainer has been explained as follows: -

"In the practice of Law, when a client hires an attorney to represent him, the client is said to have retained the Attorney. This act of employment is called the retainer. The retainer agreement between the client and Attorney sets forth the nature of services to be performed, costs, expenses and related matters..."[Emphasis Mine]
  8. The letter dated September 3, 2018 reads as follows:

"Mr Thuo

I note that you had registered Golf Fairways Limited some time back.

Could you please prepare transfers for Plot No 8478 & 8479 Nyali to Golf Fairways Limited, as discussed, in the same way you prepared the transfers to Golf Links Ltd on the other properties"



IJ Talwar  
Chairman”

9. In my view, this confirms that Mr. Talwar expressly acknowledged Mr Thuo’s provision of legal services. My reading of the letter dated September 3, 2018 as read with letter dated September 4, 2018 written by Mr Thuo also alludes to prior discussions on provision of legal services which supports the case of an established pattern of cordial advocate-client relationship
10. Furthermore, I take note that the respondents did not deny the contents of the emails or the position of 2<sup>nd</sup> respondent as chairman.
11. In view of the foregoing, this court hereby finds that the chamber summons application dated May 31, 2022 is merited and the same is hereby allowed in the following terms:
  - a. The ruling delivered by Hon I N Barasa Deputy Registrar on March 24, 2022 is hereby set aside.
  - b. The applicant/advocate’s bill of costs dated October 19, 2018 is reinstated for taxation before another taxing officer.
  - c. These orders shall apply to ELC Misc No 184 of 2018.
  - d. Each party shall bear their own costs of the application.
12. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2<sup>ND</sup> DAY OF FEBRUARY 2023.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**N/A for the Applicant/Advocate.**

**Ms. Maina for the Respondent.**

**Court Assistant; Caroline Nafuna and Philomena Mwangi.**

