



Mwangangi & Co. Advocates & another v Mbaabu & another (Environment and Land Miscellaneous Application E001 of 2023) [2023] KEELC 16268 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16268 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2023
A NYUKURI, J
MARCH 9, 2023

BETWEEN

MWANGANGI & CO. ADVOCATES 1ST APPLICANT

JOHN JOURNEY T/A BITALA & KAKINGA ADVOCATES 2ND APPLICANT

AND

ANGELLINA MUENI MBAABU 1ST RESPONDENT

**FLORENCE MWANGANGI T/A MWANGANGI & COMPANY
ADVOCATES 2ND RESPONDENT**

RULING

1. On January 10, 2023, Bitala & Kakinga Advocates instituted this suit by way of originating summons dated January 10, 2023 seeking orders that the respondent, namely Florence Mwangangi t/a Mwangangi & Company Advocates be ordered to comply with her professional undertaking dated April 8, 2022, by paying back a sum of Kshs 306,812.13 being the excess amount and or difference between the security for costs paid to her and her taxed costs. They also sought for an order to issue for the respondent to release title documents together with original deed plans and deeds of assets for LR No 12648/149 and LR No 12648/154. The summons were brought under certificate of urgency.
2. The summons were fixed for hearing on February 16, 2023. On February 13, 2023, the respondent filed a notice of motion dated February 10, 2023 seeking stay of proceedings and determination of the originating summons pending hearing and determination of the reference filed under rule 11 of the [Advocates Remuneration Order](#) by the applicant vide Machakos Misc Application No E009 of 2023. That application was certified urgent and slated for interpartes hearing on February 16, 2023.
3. Therefore when this matter came up on February 16, 2023, the respondent prayed that her notice of motion dated February 10, 2023 be heard first, on grounds that it sought to stay these proceedings and the hearing of the originating summons dated January 10, 2023. The respondent further contended



- that she has since filed references against the taxation rulings that the applicant seeks to implement through the originating summons and stated that for the sake of orderliness, the application for stay ought to be heard first.
4. The prayer for the court to prioritize the application for stay was strenuously opposed by the applicant on grounds that he filed the originating summons first and therefore the same must be determined first. According to the applicant, this court is bound to uphold ethical practices of its officers to ensure an advocate does not benefit from an undertaking they have made and try to wiggle out of the undertaking when it is time to comply with the undertaking. Counsel argued that his suit does not seek to implement a ruling on the taxation but seeks to implement an undertaking. He also argued that his application should be consolidated with the reference filed by the respondent and that the court cannot grant a stay in a professional undertaking as the hands of the court are tied. Counsel in detail argued the merits of both the application for stay and his originating summons. This was responded to in equal measure by the respondent. However, as this court is at this stage only faced with the question as to whether the application for stay should be heard before the suit herein, I will not address the issues raised or merits of the application for stay and the originating summons. I will only address myself to the question at hand.
 5. I have considered the arguments made on both sides. This is a straight forward matter where the applicant has filed a suit demanding payment of a sum of Kshs 306,812.13 on account of a professional undertaking allegedly made by the respondent. They have also sought for release of two titles by the respondent. Directions have not been taken on how the suit shall be disposed. On her part, the respondent has stated that the undertaking was in respect to the difference between the taxed costs and the security for costs deposited with her. She stated that she was not satisfied with the taxation and filed a reference and has therefore sought for stay of the suit pending determination of her reference.
 6. This court is enjoined by article 159 of the [Constitution](#) as read with section 3 of [Environment and Land Court Act](#) and sections 1A and 1B of the [Civil Procedure Act](#) to give effect to the principle objective of the laws above by facilitating the just, expeditious, proportionate and accessible resolution of disputes. The concern of this court is to facilitate expeditious, affordable and substantive justice to the parties.
 7. Viewed against the above cited legal provisions, the applicant's argument that he filed his suit first and therefore the same should be determined first is an argument that is not logical and may lead to absurd outcomes and injustice. This is because if the suit is heard first, on the premises that it was filed first, then what purpose will it serve to hear an application for stay of the suit that was sought to be stayed but has been determined? There is a difference between prioritizing the hearing of an application for stay and granting orders of stay, and therefore the applicant's argument that this court cannot grant stay was merely blurring the issues as this ruling does not address the merits of the application for stay.
 8. The right to be heard is sacrosanct and non-derogable as provided for under article 50 of the [Constitution](#). However irrelevant a party's argument may appear, they ought to be given an opportunity to be heard. Therefore, if the hearing of the suit is prioritized over the hearing of the application for stay of the suit, then effectively the respondent would have been denied the right to be heard, and that will be the highest form of injustice. As to whether or not these proceedings and hearing of this suit ought to be stayed, is a matter that will be determined on merit upon hearing the application for stay. I therefore reject the invitation to prioritize the applicant's suit on the basis that he filed it first. The application for consolidation is not before me and therefore, I will not touch on the same.
 9. In the premises, it is my finding that the application filed by the respondent dated February 10, 2023 takes precedent over the hearing of the suit and I direct that the same shall be heard first. I therefore order the applicant to file and serve a response to that application in 14 days if he so wishes to oppose



the same. The respondent is at liberty to file and serve her supplementary affidavit if any in 7 days of service. Parties are directed to file and serve submissions in respect of the said application in 28 days of this ruling. These orders shall apply to ELC Misc No E002 of 2023, ELC Misc No E003 of 2023 and ELC Misc No E004 of 2023 as the matters raised therein are the same.

10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 9TH DAY OF MARCH, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

Mr. Kakinga for the Applicant

Mrs. Mwangangi for the Respondent

Court Assistant – Josephine

