



Geoffrey Katsoleh t/a Katsoleh & Company Advocates v JAO & another (Environment and Land Miscellaneous Application E005 of 2022) [2023] KEELC 17777 (KLR) (5 June 2023) (Ruling)

Neutral citation: [2023] KEELC 17777 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2022**

JM KAMAU, J

JUNE 5, 2023

BETWEEN

**GEOFFREY KATSOLEH T/A KATSOLEH & COMPANY
ADVOCATES APPLICANT**

AND

JAO 1ST RESPONDENT

DJNK 2ND RESPONDENT

RULING

1. In Keroka PMCC Civil Suit No. E013 of 2022, the plaintiffs aver that they have been living as husband and wife since 2018 and have thus been blessed with one issue and also adopted the 2nd plaintiff's two children. The 1st plaintiff further avers that he solemnized a marriage with the defendant on 21/01/1992 and they have been living together until their separation in 1997 when the said marriage was officially dissolved on 29/10/2021 and a Decree Nisi issued by the court. By then the 1st plaintiff had built a house for the defendant at Kiserian in Kajiado County. The 2nd plaintiff has been living peacefully on L.R. No. Manga Settlement Scheme/xx where a house was put up for her. The Defendant went to the said house on 17/01/2022 together with her servants, agents and employees with the intention of evicting the 2nd Plaintiff. She managed to break the front (main) door using welding machines. The matter was reported to Manga Police Station though no action has been taken so far.
2. The suit was filed by the firm of Onyiego & Associates Advocates who on 12/07/2022 sought leave of the court to cease acting for the Plaintiffs on the grounds that the Plaintiffs had refused and/or failed to give to the said firm further instructions in the matter despite numerous requests for the same. It had therefore become impossible to act for the plaintiffs in the absence of further instructions. By this time all the documents filed on behalf of the plaintiffs or any of them were drawn and filed by the firm of Onyiego & Associates Advocates of suite No 11, 4th Floor, Gusii Deluxe Building, Opposite Zonic



Hotel, Ogembo Street, P.O. Box 37773-40200, Kisii. These include the Plaint, verifying Affidavit, Plaintiffs' List of witnesses, List of documents as well as the witness statement of the 2nd Plaintiff. There is also on record a Motion dated 20/01/2022 and a certificate of urgency supported by an affidavit of DJNK both drawn and filed by the same firm of Advocates.

3. Before the chamber summons for cessation dated 12/07/2022 was even filed and/or heard the firm of Katsoleh & Company Advocates filed a Notice of Appointment of Advocates (for the Plaintiffs) thereby joining the firm of Onyiengo & Associates Advocates to represent the Plaintiffs. The same was not indicated as Notice of change of Advocates. The last filed document in the lower court is submissions on behalf of the Plaintiffs drawn by the firm of Katsoleh & Company Advocates on 18/08/2022 and filed in court on 19/05/2022.
4. On 14/11/2022, the firm of Katsoleh & Company Advocates filed in this Court a Bill of costs christened Advocates' clients Bill of costs dated against the 2 Plaintiffs ensuing from services rendered in Keroka PMCC NO. E013 OF 2022. On 19/01/2023 the respondents in the Bill through Meroka & Co. Advocates objected through a preliminary objection to the taxation of the Bill on 2 grounds: -

1. The court lacks jurisdiction for lack of retainer.
2. The Bill of costs is premature since the Advocate has not ceased to act for the Respondent in Keroka ELC NO. E013 OF 2022.

to which the firm of Advocates responded and insisted that there was retainer and the taxation of the Bill of costs was not premature.

5. In the case of *Gichuki King'ara & Co. Advocates v Mugoya Construction & Engineering Ltd* [2010]eKLR. it was held that to allow an advocate present his Bill for taxation before the work he was retained to do is completed,

"...would create a bad precedent whereby an Advocate could tax his bill at will before the business for which he was retained is concluded, and this could result to a multiplicity of taxations in the same retainer, which would be greatly prejudicial to the client."

6. It has not been submitted on behalf of the Advocate that he is no longer acting for the said client. He must first cease acting for the respondent or wait until the matter is finalized to enable him tax his Bill. Otherwise if the Bill of costs is taxed while the Advocate is still on record and the matter is still ongoing, what happens when he ceases acting or the matter is concluded? Will he have to file another Bill? The Bill of costs is therefore premature and I order that the same be withdrawn forthwith to await the appropriate time.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 5TH DAY OF JUNE 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Applicant: N/A

Respondents: N/A

