



**Shetandi v Musa Nandwa t/a Nandwa & Company Advocates (Environment & Land Case 19 of 2022) [2023] KEELC 20383 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20383 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 19 OF 2022  
DO OHUNGO, J  
OCTOBER 3, 2023**

**BETWEEN**

**HARUN WATSULU SHETANDI ..... APPLICANT**

**AND**

**MUSA NANDWA T/A NANDWA & COMPANY ADVOCATES .. RESPONDENT**

**RULING**

1. By Originating Summons (OS) filed on 30<sup>th</sup> November 2022, the applicant averred that the respondent was his advocate in Kakamega ELC No. 312 of 2013. He therefore sought the determination of the following issues:
  1. Whether party and party costs were assessed in the sum of 957,341 in favour of the applicant.
  2. Whether the costs were paid to the respondent.
  3. Whether the respondent should render an account for the party and party costs received in Kakamega ELC No. 312 of 2013.
  4. That upon delivery of an account in (1) above, whether the applicant owes the respondent any money in fees and/or as taxed in Kakamega HC Misc No. 19 of 2020.
  5. Who should bear the costs herein have (sic).
2. Together with the OS, he filed Notice of Motion dated 29<sup>th</sup> November 2022, which is the subject of this ruling. The following orders are sought in the application:
  1. [Spent]
  2. [Spent]



3. That pending the hearing of these Originating Summons there be stay of execution of certificate of costs in Kakamega HC MISC Application No 19 of 2020.
4. That cost hereof be provided for.
3. The application is supported by an affidavit sworn by the applicant who deposed that he instructed the respondent to act for him in Kakamega ELC No. 312 of 2013 and that they agreed on legal fees of KShs 100,000 which the applicant paid. That the matter was successfully prosecuted and party to party costs were assessed at KShs 957,341. He further deposed that, thereafter, vide a letter dated 20<sup>th</sup> May 2019, the respondent demanded KShs 1,565,773 from him without indicating whether he received any money from the defendants. That a dispute arose later in relation to the computation of fees due to the respondent and the respondent filed Misc App No. 19 of 2020 in which his costs were taxed at KShs 706,012. That following the taxation, the respondent instructed M/s Pavement auctioneers who proclaimed the applicant's property to recover the said amount. He concluded by deposing that the respondent ought to owe him money because of his receipt of the party and party costs and that he stands to suffer double jeopardy if execution proceeds.
4. The respondent opposed the application through a replying affidavit filed on 14<sup>th</sup> December 2022. He deposed that he represented the applicant in Kakamega ELC No. 312 of 2013 and that subsequently, a party and party bill of costs was drawn and taxed at KShs 957,341. That contrary to the applicant's allegations, he never received the party to party costs and that he was forced to file an advocate client bill of costs dated 21<sup>st</sup> January 2020 which was taxed at KShs 256,012 which he objected to. That he lodged a reference to the High Court and that subsequently the bill of costs was re-taxed at KShs 701,512. The respondent further deposed that owing to the applicant's failure to pay the taxed costs, he instructed a firm of auctioneers who issued the applicant with a proclamation notice. He concluded by deposing that stay orders cannot issue on costs and further that the applicant has not demonstrated any good faith by clearing the outstanding legal fees.
5. The application was canvassed through written submissions.
6. The applicant argued that he is not challenging the taxation of costs in Kakamega HC Misc No. 19/2020 but that his concern is whether the party to party costs in Kakamega ELC No. 312 of 2013 was paid to the respondent and as such the respondent ought to render an account on the said party and party costs. He therefore submitted that the respondent ought to recover the taxed amount of KShs 701,512 from the party and party costs and that in the event that he has not yet recovered the said costs, then the execution now in process ought to be stayed to allow the applicant to recover the said party and party costs. That the respondent ought to give him credit for the KShs.100,000 and that pending resolution of whether the party and party costs were recovered by the respondent, there should be a stay of execution of the decree in Kakamega Misc 19 of 2020. He further relied on *Samuel Omondi Adera v Lore and Co Advocates* [2022] eKLR and argued that amounts taxed in party and party bill of costs belong to the successful client. He therefore urged the court to allow the application as prayed.
7. The respondent argued that the contested bill of costs was properly taxed at KShs 701,512 and that a stay order cannot be issued on a bill of costs. He relied on *Francis Kabaa v Nancy Wambui & another* [1996] eKLR in support of that contention. The respondent further argued that the applicant has not complied with order 9 rule 9 of the Civil Procedure Rules and that the application lacks merit. Thus, he urged the court to dismiss the application with costs.
8. I have considered the application, the affidavits, and the submissions. There is no dispute that the respondent represented the applicant and that both party and party costs and advocate client costs have been taxed. Although the applicant contends that the respondent should recover the advocate



client costs from the party and party costs, the applicant has so far not availed anything to show that the respondent has received the party and party costs. He who alleges must prove. Maybe the applicant will avail proof at the hearing of the OS.

9. At the same time, I do not think much turns on the arguments as to whether the respondent ought to have given credit for the sum of KShs 100,000. In fact, such arguments ought to have been made during the taxation of the advocate client bill of costs. This court cannot investigate that issue at this point.
10. In view of the foregoing, I find no merit in Notice of Motion dated 29<sup>th</sup> November 2022, and I therefore dismiss it with costs to the respondent.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 3<sup>RD</sup> DAY OF OCTOBER 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance for the Applicant

Mr Abok for the Respondent

