



REPUBLIC OF KENYA



**Omusundi t/a Morgan Omusundi Law Firm Advocates v Kundu
(Environment and Land Miscellaneous Application E014 of 2022)
[2023] KEELC 21356 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2022
EO OBAGA, J
NOVEMBER 9, 2023**

BETWEEN

**MORGAN OMUSUNDI T/A MORGAN OMUSUNDI LAW FIRM
ADVOCATES APPLICANT**

AND

MARY MUSULA KUNDU RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 3.4.2022 in which the client/Applicant seeks the following orders:-
 1. That this matter be certified urgent and heard *ex parte* at first
 2. That the firm of James T. Makori Advocate, Ambassador Court Suite El Jakaya Kikwete Road Nairobi be allowed to come record for the Client/Applicant.
 3. That the *ex parte* proceedings against the Client/applicant together with the ruling on costs made on the 21st day of October 2022 be and are hereby set aside.
 4. That the Client be allowed to defend the bill of costs unconditionally.
 5. That upon grant of order [4] above, the Applicant herein be granted leave to file her response to the Bill of Cost before this Court together with her submissions.
 6. That in the alternative, any amounts found due to the Advocate herein be paid by the law firm of Eshuchi & Associates Advocates
 7. That the costs of this application be in the Cause.



2. The Applicant had engaged the firm of Eshuchi & Associates Advocates to act for her in a conveyancing in respect of LR. no Pioneer/Ngeria Block 1 (EATEC) 790. The Applicant had subdivided the aforesaid land into plots which she then engaged George Eshuchi to sell the subdivided portions. Mr. Eshuchi is a relative of the Applicant and his law firm is based in Nairobi.
3. The Applicant asked Mr. Eshuchi if it would be possible for him to undertake conveyancing in respect of properties which were in Eldoret whereas his firm was based in Nairobi. Mr. Eshuchi assured her that it was possible.
4. Unknown to the Applicant, the firm of Eshuchi & Associates Advocates engaged the Law firm of Morgan Omusundi Law Firm to undertake the conveyance and would directly communicate with Mr. Eshuchi.
5. The monies from the sale of the properties was paid to the firm of Eshuchi & Associate Advocates. Mr. Eshuchi would then deduct his fees and remit the rest to the Applicant. Mr. Eshuchi remitted part of the proceeds but retained about 7,700,000/=. He then went quiet.
6. The Applicant had to report him to the Advocates complaints commission where disciplinary proceedings commenced against Mr. Eshuchi. She also reported him to Kilimani Police station. Because of the strained relationship, the Applicant hired the firm of James T. Makori Advocate to act for her.
7. As the Applicant was struggling with her estranged advocate, she was served with a Notice to show cause by the firm of Morgan Omusundi Law Firm who had taxed an Advocate/client bill of costs. It is after this that she instructed the firm of James T. Makori Advocate to act for her.
8. The Applicant contends that she never instructed the firm of Morgan Omusundi Law Firm to act for her as she did not know Mr. Omusundi. She contends that she had paid all legal fees to Mr. Eshuchi and that if Mr. Eshuchi decided to engage Mr. omusundi, then his fees should come from the firm of Eshuchi & Associates Advocates and not from her.
9. The Advocate/Respondent opposed the Applicant's application based on a replying affidavit sworn on 26/4.2023. the Respondent contends that the Applicant's application is made in bad faith and should be dismissed. The Respondent contends that the Applicant instructed him through Mr. Lagat of his office and would occasionally send her agents to come to the office particularly when taking prospective buyers to the ground and show them their files.
10. The Respondent further contends that the Applicant is hiding under her broken relationship with her lawyer to refuse to pay him his fees.
11. The applicant filed submissions but the Respondent did not file any submissions. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the Applicant. The main issue for determination in this application is whether the Deputy Registrar had jurisdiction to tax the Advocate/client bill of costs.
12. In miscellaneous application no 500 of 2010 (*Wilfred Konosi & Co. Advocates v Falcon Limited*), the Deputy Registrar struck out the Advocates bill of costs on grounds that there was no evidence of Advocate/client relationship and therefore she had no jurisdiction to entertain the bill of costs. The Advocate filed a chamber summons seeking to set aside the orders of the Deputy Registrar. The High court dismissed the chamber summons and held as follows:-

“For the Taxing Officer to embark on taxing a Bill of Costs, it must be established that there exists an advocate-client relationship and that the advocate was instructed as the law



provided. Even if the Bill went to another taxing officer, it would suffer the same fate. For these reasons, I dismiss the application dated 14th July, 2011 with costs to the respondent.”

13. The matter went to the court of Appeal which affirmed both the decision of the Deputy Registrar and the High Court Judge in the case of *Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited* (2017) eKLR. In this case, the Court of Appeal stated as follows:-

The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the *Advocates Remuneration Order*. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in *Taparn v Roitei* [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the Advocates Remuneration Order confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered.

The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.

As a Judicial Officer sitting to tax a bill of costs between an advocate and his or her client, a taxing officer must determine the question whether he/she has jurisdiction to tax a Bill if the issue of want of advocate/client relationship is raised. An allegation that the advocate/client relationship does not obtain in taxation of an advocate/client Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question. A decision in taxation where an advocate/client relationship does not exist is a nullity for want of jurisdiction. As Nyarangi, JA. stated in the memorable words in the "MV Lilian S" [1989] 1 KLR case-

"Jurisdiction is everything, without it, a Court has no power to make one more step. Where the Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

14. I have looked at the Notice of Motion dated 1.3.2022 which was placed before the Deputy Registrar asking to tax the Advocate /Client bill of costs. There was no evidence that the firm of Morgan Omusundi Law Firm had been instructed. The documents annexed showed that it is the firm of Eshuchi & Associates Advocates who had engaged the firm of Morgan Omusundi Law Firm. There was therefore no advocate /client between the Law firm and the Applicant. The Deputy Registrar should have proceeded to strike out the bill for want of jurisdiction.
15. What the Deputy Registrar did was without jurisdiction and it is a nullity. I therefore proceed to allow the firm of James 7 Makori Advocate to act for the Applicant. The taxation whose ruling was delivered on 21.10.2022 being a nullity, the same is hereby set aside in its entirety with costs to the Applicant. The Applicant shall also have the costs of the application dated 3.4.2022.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF NOVEMBER, 2023.



E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Katee for Applicant.

M/s Odhiambo for Mr. Omusundi for Respondent.

E. O. OBAGA

JUDGE

9TH NOVEMBER, 2023

