



**Maru v Maru; Dosani (Interested Party) (Environment and Land Case
Civil Suit 438 of 2013) [2022] KEELC 3601 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 438 OF 2013**

SO OKONG'O, J

JULY 7, 2022

BETWEEN

BHARAT ISHWARLAL MARU PLAINTIFF

AND

DEEPAK ASHWINKUMAR MARU DEFENDANT

AND

RAHEMAT ESSA DOSANI INTERESTED PARTY

RULING

1. What is before the court is the interested party's notice of motion application dated February 8, 2021 seeking the following orders; that the orders issued on October 28, 2019 be reviewed and replaced with an order that a joint account be opened in the names of Tariq Khan & Associates Advocates and the firm of Nelson Harun & Co Advocates pending the hearing and determination of the application dated July 8, 2019; that the firm of Nelson Harun & Co Advocates be directed to tax its bill of costs within 7 days and that, the court be pleased to issue any other orders it deems suitable in the circumstances.
2. The application was brought on the grounds set out on the face thereof and on the affidavit of the interested party sworn on February 8, 2021. The application was brought on the grounds that on October 28, 2019, the court ordered that a sum of Kshs 8,000,000/- that was due to the interested party herein be deposited in an interest earning account in the joint names of the interested party and the firm of Nelson Harun & Co Advocates. The interested party averred that she had since retained the firm of Tariq Khan & Associates to act for her in this suit. The interested party averred that the only outstanding issue was the costs payable to the firm of Nelson Harun & Co Advocates by the interested party which could be resolved through taxation of the said firm's costs. The interested party averred that she would suffer prejudice if the orders sought were not granted.



3. The interested party averred that her new firm of advocates had approached the firm of Nelson Harun & Co Advocates to have the said sum of Kshs 8,000,000/- deposited in the joint names of the two firms but the firm of Nelson Harun & Co Advocates did not accept the proposal. The interested party averred further that although the firm of Nelson Harun & Co Advocates had claimed that the professional fees due to it for the services rendered to the interested party was Kshs 4,500,000/-, the firm refused to file its bill of costs for taxation.
4. Although the firm of Nelson Harun & Co Advocates claimed to have filed a replying affidavit in response to the application, none is on record. As at the time the application was filed, all pleadings were being filed electronically through the Judiciary Case Tracking System(CTS). There is neither a replying affidavit nor grounds of opposition from the firm of Nelson Harun & Co Advocates on the CTS or the physical court record.
5. At the hearing of the application, Ms Athman who appeared for the interested party relied entirely on the grounds on the face of the application and the interested party's replying affidavit. She submitted that the application was not opposed by the firm of Nelson Harun & Co Advocates since it had not responded to the same. Counsel informed the court that the firm of Majanja Luseno & Co Advocates for the defendant which was holding the said sum of Kshs 8,000,000/- had no objection to the application.
6. In his submission in response to the application, Mr Muturi for the firm of Nelson Harun & Co Advocates contended that the court had no jurisdiction to grant the orders sought by the interested party. Counsel submitted that the limb of the application seeking to compel the firm of Nelson Harun & Co Advocates to file its bill of costs for taxation was improperly before the court in that such order could only be granted on an application brought by way of originating summons as provided for in Order 52 of the *Civil Procedure Rules*.
7. Counsel argued further that no explanation had been given by the interested party as to why the orders of October 28, 2019 sought to be reviewed had not been complied with. Counsel submitted that the interested party would not suffer any prejudice if she complied with the said order. Counsel submitted that due to the failure on the part of the parties concerned to comply with the said order, interest of more than Kshs 2,000,000/- had been lost. Mr Muturi submitted that the review application was not brought to court timeously. He submitted that the interested party's new firm of advocates which had come on record barely 10 days after the making of the order sought to be reviewed did not explain why it did not move the court immediately for the review sought.
8. Mr Muturi submitted that if the court was inclined to grant the orders sought, the firm of Nelson Harun & Co Advocates would not mind if the said sum of Kshs 8,000,000/- was deposited in Standard Chartered Bank Limited in the joint names of the firm of Nelson Harun & Co Advocates and that of the interested party's advocates. Counsel contended however that the interested party should be compelled to add to the said amount interest that had been lost due to the delay in depositing the said sum of Kshs 8,000,000/-.
9. Ms. Inimah for the defendant submitted that the delay on the part of the firm of Majanja Luseno & Co Advocates to deposit the said sum of Kshs 8,000,000/- was occasioned by the failure of the firm of Nelson Harun & Co Advocates and the interested party to open a joint account at which the deposit was to be made. Ms Inimah submitted that the firm of Majanja Luseno & Co Advocates was willing and ready to make the deposit as soon as the said joint account was opened.
10. In a rejoinder, Ms Athman reiterated that the firm of Nelson Harun & Co Advocates had not served any response to the application. Counsel urged the court to disregard the submissions by Mr Muturi



as the same had no basis. On whether the court had jurisdiction to order the firm of Nelson Harun & Co Advocates to file its bill of costs, Counsel submitted that the issue of costs was raised by that firm in these proceedings and as such the court had jurisdiction to deal with the issue. Counsel submitted that the firm of Nelson Harun & Co Advocates would not suffer any prejudice if the orders sought were granted. On the issue of interest, Counsel submitted that the same was not before the court for determination.

11. In his final address to the court, Mr Muturi submitted that he had served grounds of opposition by e-mail and had also forwarded the same to court on the eve of the hearing.
12. The order sought to be reviewed herein was made pursuant to an application by the firm of Nelson Harun & Co Advocates dated July 8, 2019. The order was on the following terms:
 - “1. That the sum of Kshs 8,000,000/- held by the firm of Majanja Luseno & Co Advocates on behalf of the Interested Party shall be deposited in an interest earning joint bank account in a reputable bank in Nairobi in the names of Nelson Harun and Co Advocates and the Interested Party, Rahemat Essa Dosani pending determination of the costs if any payable to the said firm of Nelson Harun and Co Advocates or further orders by the court.
 2. That each party shall be at liberty to apply.
 3. That.....”
13. It is not disputed that when the above order was made, the interested party did not have an advocate. The firm of Nelson Harun & Co Advocates previously acting for her had ceased to so act. It is also not disputed that the interested party has since engaged the firm of Tariq Khan & Associates to act for her in this matter. It is common ground that the order made on October 28, 2019 has not been complied with because the firm of Nelson Harun & Co Advocates and the interested party are yet to open a joint account at which the sum of Kshs 8,000,000/- held by the firm of Majanja Luseno & Co Advocates on behalf of the interested party was to be deposited.
14. The order of October 28, 2019 gave the parties liberty to apply. I am unable to see any prejudice that will be suffered by the firm of Nelson Harun & Co Advocates if the joint account is opened in the name of the said firm and the firm of Tariq Khan & Associates now on record for the interested party. The interested party has a right to act in person or to be represented by an advocate. The interested party has chosen to be represented by Tariq Khan & Associates which firm has formally come on record for the interested party in this matter. I am not satisfied that any valid reason exists that would justify the refusal to vary the names in the order of October 28, 2019 in which a joint account was to be opened. The firm of Nelson Harun & Co Advocates has not convinced me that the delay in the opening of the said account is attributable to any wrong doing on the part of the interested party.
15. On the limb of the application seeking an order compelling the firm of Nelson Harun & Co Advocates to tax its bill of costs, again I find the prayer merited. The order of October 28, 2019 was made pending the assessment or determination of the costs payable by the interested party to the firm of Nelson Harun & Co Advocates. The order was not to last for an indefinite period. The firm of Nelson Harun & Co Advocates which came to this court to secure its costs cannot be heard to challenge the jurisdiction of the same court to direct it to file its bills of cost in the matters in which it acted for the interested party. This court has power to discharge the orders of October 28, 2019 if the said firm fails to take steps to have its fees assessed. It is not onerous therefore for the firm of Nelson Harun & Co Advocates to be called upon to file and have its bills taxed so that the fees due to it from the interested party which is to be deducted from the said sum of Kshs 8,000,000/- is known.



16. For the foregoing reasons, I find merit in the interested party's notice of motion application dated February 8, 2021. The application is allowed on the following terms;
1. The firm of Majanja Luseno & Co Advocates shall forthwith issue a banker's cheque in the sum of Kshs 8,000,000/- held by it on behalf of the interested party in favour of Nelson Harun & Co Advocates and Tariq Khan & Associates Advocates and shall deliver the same to the firm of Tariq Khan & Associates Advocates.
 2. The firm of Nelson Harun & Co Advocates and Tariq Khan & Associates Advocates shall deposit the said cheque of Kshs 8,000,000/- within 21 days of receipt by the firm of Tariq Khan & Associates Advocates in an interest earning joint bank account in their names in a reputable bank in Nairobi pending the determination of the costs payable by the interested party to the firm of Nelson Harun & Co Advocates or further orders by this court.
 3. The firm of Nelson Harun & Co Advocates shall forthwith if it has not yet done so file its bills of cost in respect of the matters in which it acted for the interested party for taxation.
 4. Each party shall bear its own costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY 2022

S. OKONG'O

JUDGE

Ruling delivered through Microsoft Teams Video Conferencing platform in the presence of;

N/A for the Plaintiff

Ms. Inimah h/b for Mr. Luseno for the Defendant

Mr. Athman for Interested Party

Mr. Muturi for Nelson Harun & Co. Advocates

Ms. C.Nyokabi-Court Assistant

