



A Thuo Kanai Advocates v Cannon Assurance Limited (Miscellaneous Application 329 of 2013) [2025] KEHC 2799 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
MISCELLANEOUS APPLICATION 329 OF 2013**

**BM MUSYOKI, J
MARCH 14, 2025**

BETWEEN

A THUO KANAI ADVOCATES APPLICANT

AND

CANNON ASSURANCE LIMITED RESPONDENT

RULING

1. The applicant's notice of motion dated 6th October 2021 seeks the following orders;
 - a. This Honourable Court be pleased to enter judgment for the sum of Kshs 78,165/= in costs as certified by the Deputy Registrar on the 8th July 2021
 - b. This Honourable Court be pleased to award interest on the said sum of Kshs 78,165/= at the rate of 14% per annum from 14th February 2013 being one month after service of the fee note on the respondent/client specifying that interest will be charged on costs until payment of costs pursuant to Rule 7 of the *Advocates Remuneration Order*, 2009.
 - c. Costs of the application be provided,
2. I have already written a ruling in miscellaneous application number E126 of 2013 which is between the same parties and similar cause of action except that in 126 of 2013, the bill of costs related to Nairobi High Court civil suit number 511 of 2011 while the primary suit for this matter is CMCC number 3537 of 2007. In the said ruling, I have expressed my opinion on an application of this nature where retainer is disputed. Going by the affidavits of the parties in this matter, it is clear that they are not agreeable on the retainer. Whereas the applicant acknowledges that there was a dispute on the retainer, he claims that the same was settled vide ruling of the Deputy Registrar in miscellaneous applications numbers 125 of 2013 and 263 of 2013 and that of Justice Maureen Odero in Miscellaneous application number 263 of 2013. Further in my ruling in miscellaneous application number 126 of 2013, I have



held that in matters of taxation of advocate-client's bill of costs, each case comes with its instructions and where a dispute on retainer is raised, the same must be proved on each case.

3. The applicant has in supplementary affidavit sworn on 25th November 2024 averred that the respondent's advocates had proposed that Miscellaneous application number 263 of 2013 be used a test suit on issue of retainer for this application and 11 others and that the issue of retainer was determined by the Deputy Registrar in the said application number 263 of 2013 on 21-02-2018 where he held that the same was res judicata since there had been an earlier ruling confirming existence of advocate/client relationship between the parties in miscellaneous application 125 of 2013. According to the applicant, reference to that ruling was filed and by ruling dated 29th November 2019, Honourable Justice Maureen Odero confirmed the Deputy Registrar's decision on retainer. The applicant has exhibited these two rulings.
4. I have carefully gone through the two rulings. The decision of the Deputy Registrars in miscellaneous applications numbers 125 of 2013 and 263 of 2013. I have noted that the ruling of Justice Maureen Odero was on whether the Deputy Registrar's ruling was correct on the question of res judicata. The Judge did not make any finding on whether there was retainer or not. I have already held in my earlier ruling in miscellaneous application number 126 of 2013 that the Deputy Registrar does not have jurisdiction to determine whether or not there was retainer in matters of taxation. This determination can only be made by a Judge.
5. I notice that the question of whether the applicant could earn fees separate from his salary at the time he was allegedly employed by the respondent cuts across several bills filed in this court and whose status is not clear to me. Parties are encouraged to have this single question determined by a judge which in my view will ease determination of any pending applications. If such determination has been made like it appears to have in ELC number 162 of 2015, it will serve all well if the parties narrowed their issues to that determination.
6. In view of the above analysis, I find that there is a dispute on retainer and that must be addressed first before the applicant can apply for entry of judgment under Section 51(2) of the *Advocates Act*. In the circumstances, I decline to consider the application dated 6th October 2021 until such a time that the court will deliver determination of retainer in respect of CMCC number 3537 of 2007. I make no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Thuo for the applicant and Mr. Gitonga for the respondent

