



REPUBLIC OF KENYA



**Otieno v Njiru t/a BN Mbuthia & Co Advocates (Civil Case 503 of 2011)
[2024] KEHC 1002 (KLR) (Civ) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE 503 OF 2011**

**JN MULWA, J
FEBRUARY 8, 2024**

BETWEEN

BENARD O OTIENO PLAINTIFF

AND

**BENSON MBUTHIA NJIRU T/A BN MBUTHIA & CO
ADVOCATES DEFENDANT**

RULING

1. The grievous by the Applicant/Plaintiff herein Benard O. Otieno against the defendant by this Notice of Motion dated 15/08/2023 is that the defendant's party and party bill of costs dated 5/05/2023 taxed at Kshs. 324,245/= on 9/08/2023 was filed by an advocate who was not properly on record in contravention of provisions of Order 9 Rule 9 of the Civil Procedure Rules and that it was not served upon the Plaintiff's Advocates then Madhani Advocates LLP.
2. It is therefore urged by the Applicant that this court do grant a stay of execution of the Certificate of Costs dated 9/08/2023, set aside the exparte proceedings that culminated to the Taxation dated 9/08/2023 and further, either strike out the Bill of Costs dated 5/05/2023, or in the alternative, grant leave to the Applicant/Plaintiff to defend the defendant's bill of costs dated 5/05/2023 with directions for it to start *de novo*.
3. The Application is based on provisions of order 9 Rule 9 of the Civil Procedure Rules and Supporting Affidavit sworn by David Janjo Advocate on 15/08/2023.
4. The Application is opposed by a Replying Affidavit sworn and filed on 5/10/2023.

The Respondent deposes that the Bill of Costs, Notice of Taxation and the Certificate of Taxation were all received by the firm of Mohamed Madhani & Company Advocates as evidenced by the receiving



stamp under the above name, and in its view, the said law firm and Madhani Advocates LLP are one and the same, operating from same premises and using same receiving stamps of court process.

It is further argued that at the time of filing and service of the impugned documents being 5/05/2023, there was no notice of change of advocates to Madhani LLP Advocates filed and/or served upon the Respondent's Advocates.

5. I have considered the Parties' Affidavits in Support and opposition to the application.

It is trite that before a change of Advocates is effected after judgment in a suit, provisions of Order 9 Rule 9 of the Civil Procedure Rules must be complied with. The law firm that was on record for the Plaintiff when the impugned bill of costs or before the suit was struck out by the Hon. Serگون J on 24/02/2023 was Madhani Advocates LLP. I have seen a Notice of Change of Advocates dated 1/03/2021 served upon Akoto & Akoko Advocates for the Defendant.

Whether the said Notice of Change was properly served and received is not clear as no affidavit of service was produced before me.

6. On the other hand, at the date the suit was struck out, the Defendant's Advocates were Akoko & Akoko Advocates and by a Notice of Change of Advocates dated 5/05/2023, the said firm changed its name to Masaviru & Ketoo Advocates.
7. By the above therefore, the party and party Bill of Costs dated 5/05/2023 was drawn by Masaviru & Ketoo Advocates who were properly on record having drawn and filed a change of Advocates.
8. On the service of Bill of Costs and the Certificate of Costs dated 9/08/2023, I am persuaded that the same were properly served upon the law firm of Madhani Advocates LLP who came on record for the Plaintiff on 1/03/2021. I find so because, Madhani Advocates LLP retained its former premises, and its receiving stamp which clearly is where the impugned documents were served, and received by its staff or its front office reception where the said documents were duly stamped and received on 15/06/2023. This fact is not in dispute
9. I must state that Madhani Advocates LLP cannot come to court to blame itself for not changing its receiving stamp and want the court to shift the blame to the Defendant's Advocates. Had it refused to accept service of the documents, the bill of costs, notice of taxation, and the certificate of costs, then I would not be hesitant to hold that service was not properly effected, and grant the prayers sought in the application.
10. For the above reasons, I am not persuaded to grant stay of execution of the Certificate of Costs dated 9/08/2023, nor to grant any of the other prayers sought in the Application dated 15/08/2023.

The Application is dismissed with costs to the Defendant/Respondent.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2024.

J. N. MULWA

JUDGE

