



REPUBLIC OF KENYA



**M. S. Shariff & Company Advocates v Gaceri (Miscellaneous Civil Case
E005 of 2023) [2024] KEHC 10313 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL CASE E005 OF 2023**

GMA DULU, J

JULY 5, 2024

BETWEEN

M. S. SHARIFF & COMPANY ADVOCATES ADVOCATE

AND

TANNEN GACERI CLIENT

RULING

1. Before me are two applications. The first is a Chamber Summons dated 4th January 2023 lodged by M. S. Shariff & Company Advocates hereinafter called the Advocate.
2. This Chamber Summons was filed under Article 50(1) and 159 of the Constitution of Kenya, and paragraphs 2, 11(1) and (2), 49, 50 of Schedule VII (part B) of the Advocates Remuneration Order and Section 1A, 1B and 3A of the Civil Procedure Act (Cap.21), and seeks the following orders
 1. That the court be pleased to set aside the ruling of Hon. C. K. Kithinji Deputy Registrar delivered on 21st December 2022 in Voi High Court Miscellaneous Application No E012 of 2022 aforesaid.
 2. That the court be pleased to tax afresh the Advocate Client Bill of Costs (Amended) dated 19th July, 2022 and filed on 8th September 2022 or alternatively refer the same for taxation before a different Taxing Officer other than Hon. C. K. Kithinji.
 3. Costs of this reference be awarded to the applicant.
3. The application has grounds on the face of the Chamber Summons and was filed with a supporting affidavit sworn by Winnie Julu Advocate on 4th January 2023.
4. The application is opposed through a replying affidavit sworn on 15th March 2023 by Ngunjiri Gachari an Advocate in the firm of E. Kinyanjui & Company Advocates for the respondent/client in which it was deponed inter alia that the said deponent of the affidavit Ngunjiri Gachari Advocate, had written



to the Law Society of Kenya seeking verification of the status and position of Advocate Julu Winnie Atieno, and that the information received therefrom was to the effect that the said Advocate had declared to be practising in the firm of Jengo & Associates Advocates.

5. The second application herein is a Notice of Motion dated 13th March 2023 filed by Tannen Gaceri the client through counsel E. Kinyanjui & Company Advocates under Article 50 and 159 of the Constitution of Kenya, and Section 1, 1B and 3A of the Civil Procedure Act (Cap.21), and Order 51 Rule 1 of the Civil Procedure Rules 2010, seeking the following orders:-
 1. That this court be pleased to issue an order vesting the funds held in Access Bank Account No 00201xxxxxxx, Account Title M. S. Shariff & Company E. Kinyanjui & Company Advocates and Account Branch: Mombasa to Tannen Gaceri.
 2. That such further and other relief be granted to the applicant as this court deems fit and expedient in the circumstances.
 3. That each party to bear its costs.
6. The application has grounds on the face of the Notice of Motion which refer to Voi High Court Miscellaneous Application No E003 of 2021 Tannen Gaceri v M. S. Shariff & Co. Advocates & C. B. Gor & Gor Advocates wherein, the High Court issued orders in a ruling already delivered.
7. The Notice of Motion was filed with a supporting affidavit sworn by Tannen Gaceri on 13th March 2023, in which it was deponed inter alia that Shariff Mwanaisha Saida was on 5th December 2022 appointed as a Judge of the High Court of Kenya, and that her advocates firm was no longer a going concern and could presently be construed as operational.
8. The Notice of Motion is opposed through a replying affidavit sworn on 21st September 2023 by Mwanaisha Saida Shariff, as well as supplementary affidavit sworn by Mwanaisha S. Shariff on 2nd July 2023, in which it is deponed inter alia that joining the bench as a Judge did not extinguish her rights and claims to be reimbursed for moneys the advocate expended on account of the client, and that already Ong'injo J had on 10th March 2022 made orders as to costs.
9. I note that the supplementary affidavit sworn on 2nd July 2023 by Mwanaisha S. Shariff did not disclose the application in respect of which it was filed, but annexed a number of documents showing the relationship between the advocates firm M. S. Shariff & Company Advocates and Winnie Atieno Julu, who had been approved by the Law Society of Kenya to be the administrator of the law firm of M. S. Shariff & Company Advocates.
10. Also field herein, was an affidavit on the status of M. S. Shariff & Company Advocates sworn by Ngunjiri Gichari Advocate on 28th November 2023, in which it is deponed that, since the firm of Shariff Ramadhan & Company Advocates had come on record for M. S. Shariff & Company Advocates, the firm of M. S. Shariff & Company Advocates did not exist anymore.
11. The two applications were canvassed together through written submissions. In this regard, I have perused and considered the submissions filed by Shariff Ramadhan & Company Advocates for the advocate, as well as the submissions filed by E. Kinyanjui & Company Advocates for the client.
12. Coming now to the first application filed by way of Chamber Summons by the advocate, I have already listed the prayers therein above on in this ruling.
13. The said application arose from a ruling delivered by the Taxing Master as Deputy Registrar on 21st December 2022 in Miscellaneous Application E010 of 2022, in which the Taxing Officer relying on an agreement signed between the client and the advocate concluded that there being in existence a signed



agreement on legal fees, between the client and the advocate, there should be no taxation and that the Bill of Costs, thus the Bill of Costs filed was struck off. I note that, the said ruling was also to apply in Voi High Court Misc. E011 of 2022 and E12 of 2022, which are two related matters to the present application.

14. I note also that, before the decision of the Taxing Officer above, the High Court Onginjo J., in a ruling in Civil Miscellaneous Reference No E003 of 2021 delivered on 10th March 2022 had found that in all the related cases PMCC 24 of 2017, PMCC 25 of 2017, and PMCC 26 of 2018, the advocate had agreed in writing to legal fees of 1/3 of the decretal amount.
15. According to the learned Judge also, the only dispute pending was whether the advocate had fully discharged her duties in PMCC 26 of 2018 and PMCC 24 of 2017 and 25 of 2017, and thus the Judge ordered taxation of costs, in the following terms:-
 - “ 27. The dispute is whether the 1st respondent fully discharged her responsibility to the applicant in regard to CMCC No 26 of 2018 and also Voi CMCC No 24 and 25 of 2017.
 28. From the reading of the application, the responses and submissions the 2nd (should be 1st) respondent and the applicant are not agreeable as to client and advocate costs. Such costs can only be determined by the taxation of the bill of costs by the taxing master. In that regard this court orders as followsto be deposited in a fixed deposit account in the names of the applicant and 1st respondent’s advocates within 21 days to await taxation of advocate/client costs by the Deputy Registrar.”
16. It was after the above ruling by the Judge, that the Deputy Registrar, as Taxing Officer after considering the bill of costs filed and the dispute referred to above by the learned Judge between the parties, that the Taxing Officer came to the conclusion that there was no issue arose, which would necessitate itemised taxation bill of costs, as the signed agreement between advocate and client was clear the fees payable. This is what prompted the filing of the two applications herein.
17. For the record, the said agreement between client and advocate, written in hand by the advocate and signed by both the parties reads as follows – “Agreed fees between my advocate and myself shall be a 1/3 exclusive of costs. 29th November 2016.”
18. Having considered the totality of this matter, in my view, the Taxing Officer found that the agreed amount of legal fees between client and advocate above, was inclusive of all legal fees payable and that the signed agreement is clear, I find no basis for setting aside the Taxing Officer’s orders as it is clear to me that the agreed advocates fees was to be 1/3 of the award in each case, and even the learned Judge Ong’injo did find so in the above ruling.
19. Thus I find no merits in the Chamber Summons dated 4th January 2023 which is thus dismissed. However the amounts calculated by the Judge in the ruling as being advocates fees are payable, if not yet paid.
20. With regard to the application by way of Notice of Motion dated 13th March 2023, having considered all the grounds therein, affidavits and the submissions filed on behalf of the parties, I find that substantive justice will require that the money deposited in the joint bank account will not remain therein for eternity. It has to be released, as even the High Court in its earlier ruling, had specifically given a timeline of 21 days for action to be taken either way, on the amounts in the joint bank account.



21. The arguments put across about the status of advocate Julu Winnie Atieno, and the status and change of name of M. S. Shariff & Company Advocates are in my view academic, as they do not address the issues in dispute herein, since no third person or institution has come to court to claim the money involved or any part of the amount. Besides, it is not disputed that advocate Julu was appointed as administrator of the firm of M. S. Shariff & Company Advocates, thus any amount due to that firm as quantified by Ong'injo J. is payable to Julu advocate as administrator. The Notice of Motion is thus also not successful to that extent.
22. To finally determine the two applications therefore, I order as follows:-
- i. The amounts determined by Onginjo J. as due to the advocate M. S. Shariff & Company Advocate as advocates fees will be released from funds held in Access Bank Account No 00201xxxxxxx, Account Title M. S. Shariff & Company E. Kinyanjui & Company Advocates and Account Branch: Mombasa to the administrator Julu advocate if not yet paid within 20 days from today.
 - ii. The amount in the joint Access Bank Account in (i) above (except the advocates fees above) will be released to counsel for the client Tannen Gaceri herein within 30 days from today.
 - iii. Parties will bear their respective costs of the two applications.
 - iv. These orders apply mutatis mutandis to the other related two files E003 of 2023 and E004 of 2023.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Ms. Mboba for the advocate

Ms. Kariuki holding brief for Michuki for client

