



Wanjiru v Waiganjo Wachira & Company Advocates (Miscellaneous Application E355 of 2021) [2023] KEHC 717 (KLR) (Civ) (9 February 2023) (Ruling)

Neutral citation: [2023] KEHC 717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E355 OF 2021
JN MULWA, J
FEBRUARY 9, 2023**

BETWEEN

MARGARET MUTHONI WANJIRU APPLICANT

AND

WAIGANJO WACHIRA & COMPANY ADVOCATES RESPONDENT

RULING

1. Before the court is an application dated October 27, 2021 filed by Margaret Muthoni Wanjiru, herein after referred to as the client against the law firm of Waiganjo Wachira & Company Advocates in the matter of Taxation of a Bill of Costs between the law firm against the client, arising from a suit filed by the law firm on behalf of the client in Milimani Chief Magistrate's Court, Civil Suit Number E5923 of 2020, dated 1st July 2021.
2. Before the Bill of Costs could be taxed, the client filed a Notice of Appointment of Advocate dated August 6, 2021 appointing the firm of Marienga & Company Advocates to act for her in the matter of the Taxation of the Bill of Costs.
3. By the present application dated October 27, 2021 brought by the Client through the newly appointed Advocates Ms Marienga & Company Advocates sought several Orders: -
 1. Spent
 2. That Stay of Taxation of the applicant's Bill of Costs scheduled for taxation until further orders.
 3. That the application be placed before the Judge for directions and/or determine whether a retainer agreement existed between the firm of Waiganjo



Wachira and Company Advocates and the applicant and grant appropriate orders

4. That this Honourable Court dismiss the application for taxation dated and filed on July 16, 2021 by the firm of Waiganjo Wachira and Company Advocates.
5. That the Honourable Court grants such other orders which it may deem fit, just and proper in the in the circumstances.
6. That the costs of this application be borne by the Respondent.

Upon grounds stated at the face thereof, and supporting affidavit sworn on October 27, 2021 by the client, and a supplementary affidavit sworn on November 2, 2022.

4. The bottom-line of the client's grievances is that the respondent law firm acted without her authority and proceeded to enter into a consent on liability and filing submissions without her consent. She therefore moved the trial court to arrest the delivery of judgment through her newly appointed Advocates.
5. By the above, the client avers that she is and was a stranger to the actions of the Advocates (Waiganjo Wachira & Company Advocates) hence the application before the court, specifically on the issue as to whether there existed a retainer between the client and the firm of Waiganjo Wachira & Company Advocates, and if the court finds that no retainer existed, to proceed to dismiss the Taxation dated July 16, 2021 by the Advocates.
6. On record is a supplementary affidavit sworn on the 2nd of November 2022 by the client without leave of court. There is no indication that the same was served upon the respondent to give it an opportunity to respond to the averments therein. For the above reason, the said supplementary affidavit is herein expunged from the court records.
7. In opposing the application, the advocates filed a replying affidavit sworn on the 15th of April 2022, and thereafter submissions dated December 9, 2022. The applicant (client) has not filed submissions as directed by the court.

The court has considered the parties' pleadings

8. The issues that arise for determination in my considered view are:
 - 1) Whether there existed a retainer agreement between the client and M/s Waiganjo Wachira & Company Advocates prior to the current Advocates Marienga & Company Advocates were appointed by the client on the 6th of August 2021.
 - 2) If the answer to the above is in the negative, whether the Advocate – Client Bill of Costs dated July 1, 2021 should be dismissed.
9. From the onset, it is clear from the record that the respondent's Advocates had in their possession all the documents in respect of the client's traffic accident that facilitated the filing of the primary suit at the Chief Magistrates Court. The court would wish to ask itself how these documents came into the possession of the Advocates, Including the client's ID and treatment notes. What about the instructions note dated June 3, 2020 with very pertinent details that in my view could only have been provided by the client herself?



10. In the supporting affidavit to the application, two law firms were also cited as having been instructed by the client to act for her; being Gachoka & Company Advocates and Oloo & Oloo Advocates. These Advocates were not called upon to answer to the allegations by the client and particularly Gachoka and Company Advocates who allegedly acted for the Defendant and the Insurance Company, CIC.
11. These are very pertinent issues that must be interrogated and answered for the court to arrive at a well-informed decision.

It is not enough for the client to deny having given instructions to the Advocates and handing over duly signed documents to the said Advocates. There is no allegation that her signature in the instructions note is not her signature; or that it was forged. The law demands that any allegation of fact must be proved – Section 107 – 109 of the *Evidence Act* – See annexure no 12.

12. *In the Re Estate of Johanna Keya Kikuyu (Deceased)* 2020 eKLR, it was held as follows:

“The allegation of forgery of a signature places a heavy burden upon the person making it to prove the same beyond reasonable doubt. The applicants herein merely stated that the signatures on the will were forged based on their knowledge of how the deceased’s signature looked like. They did not place any other or further evidence on the matter of forgery beyond that allegation”

13. It is also on record that the client answered to the Advocates Respondent’s call to attend court for the hearing of the suit, and attempted to log in to the virtual court. If indeed the client had not instructed the Advocates, why would she attend court, or attempt to by logging into the virtual court?

In the case *Gitonga Mureithi & Company Advocates v Centre for Multiparty Democracy* [2018] e KLR, the court held that there is no law requiring that instructions by a private entity to an Advocate must be in writing; that it may be express or implied from the conduct of the parties in the case.

Likewise, in an earlier case, *Machira & Company Advocates v Arthur K Magugu & another* HCCC MISC APPL No 3258 of 2001, it was held that: -

“A client who chooses to withdraw instructions from his advocate without payment, undertaking or any other appropriate arrangement regarding the Advocates’ fees must be prepared to pay to the Advocate such sum as may be found due and payable upon taxation of the advocate/client Bill of Costs”

14. The Respondent advocate relied on the case *Githuku and Githuku & Company Advocates v Enock Wamalwa Kibunguchy* [2019] eKLR wherein the client produced a retainer agreement between himself and the Advocate which was in writing and signed by both parties. The client alleged that the retainer agreement was fabricated. The court held that;

“.....the said retainer agreement had to stand in the absence of evidence proving forgery or fabrication as the same is valid under section 45 (1) of the Advocates Act”

15. Further, in the case *Christine James Kioko v JA Makau & Ccompany Advocates* [2012] eKLR, the court, in similar circumstances held that: -

“It is further my view that an Advocate who has been instructed to act for a client has a legitimate expectation that his/her legal fees will be paid by the client whether or not the Advocate/client relationship is severed.”



16. The Advocate/respondent submitted that the client has curiously filed the Notice of Change of Advocates as earlier stated, and is proceeding with the case before the Chief Magistrates' Court as filed by the respondent. She has not told the court that she will withdraw the case, and start afresh; or what course of action she would take, should the application be allowed.
17. As ably held in the *Christine James Kioko case (supra)*, whether a client severs the relationship with the Advocate, the Advocate has a Legitimate expectation to be paid for services rendered including, and not limited to instructions fees, up to the date the Advocate – client relationship was severed being the date of filing and service of the clients/applicants Notice to Act in person dated July 5, 2021 and date of service of the same upon the advocates.
18. In the answer to the issues flagged for determination, the court finds and holds that the application dated October 27, 2021 lacks merit and is dismissed with costs.

The following orders are consequently issued:

1. There indeed existed a retainer agreement between the client/applicant and the respondent firm of Advocates up to the date the Notice to Act in person dated July 5, 2021 was filed and served upon the Advocates.
2. That the respondent's Bill of Costs against the client dated July 1, 2021 shall proceed to taxation to determine the costs payable by the client to the respondent's Advocates.
3. The costs of this application shall be borne by the client/applicant to the respondent Advocates, Waiganjo Wachira & Company Advocates.

Orders accordingly

DELIVERED DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF FEBRUARY 2023.

J. N. MULWA

JUDGE

