



**A G N Kamau & Company Advocates v Chabrin Agencies Limited (Miscellaneous Application E494 of 2019) [2023] KEHC 3345 (KLR) (Commercial and Tax) (18 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3345 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E494 OF 2019**

**JWW MONG'ARE, J**

**APRIL 18, 2023**

**BETWEEN**

**A G N KAMAU & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**CHABRIN AGENCIES LIMITED ..... RESPONDENT**

**RULING**

1. Before the court is an application dated March 24, 2022 by the applicant brought under section 1A, 1B of the *Civil Procedure Act*, Cap 21 laws of Kenya, order 51 Rule 1 of the *Civil Procedure Rules* and all enabling sections of the law seeking the following orders;
  - a. That the Honourable Court do give directions that the Applicant's advocate-client retainer existed between the Applicant and the Respondent herein and make appropriate orders.
  - b. That an order do issue directing that the applicant's Advocate-Client Bill of Costs dated October 25, 2019 be taxed.
  - c. That costs of this applications be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Allan George Njogu Kamau dated January 20, 2021, while the Respondent has filed a Replying Affidavit of Dishon Ndogo sworn on January 20, 2022.
3. Both parties filed submissions to the application which I have read through. Parties also did make oral highlights of their submissions before me. I have perused the record and note that this matter was first canvassed before the taxing officer who via ruling dated 30/4/2020 held that there was no



- client advocates relationship between the Applicant and the respondent and struct out the Bill of Costs presented for taxation before the Deputy Registrar.
4. Subsequently I note that a reference to the decision by the deputy Registrar was filed before the High Court and this court held that the Taxing Master lacked requisite jurisdiction to determine the issue on whether or not a retainer agreement existed between the Applicant and the Respondent, to warrant the presentation of an Advocate- Client Bill costs, being presented for taxation by the court. The court directed the parties file an application before the High Court for determination, being the present application before me.
  5. Parties appeared before me virtually on March 13, 2023 to canvass their submissions orally. The Applicant maintains that he had instruction to represent the client in the suit subject matter of the Bill of costs and therefore he earned fees which the Taxing Master should award by taxing the Advocate/Client Bill of costs already before the court. It is the argument of the Applicant that indeed the Respondent/Client made an initial payment of Kshs 100,000/- towards legal fees on 15/5/2017 despite there being no written retainer agreement for the same. The Applicant maintains that subsequently they attended court for various mentions and hearings and updated the client through several letters on the position of the matter. The applicant states that the relationship lasted a period of 2.1/2 years and at no time did the Respondent decline having issued them with instructions to act as they did. Indeed, the Applicant maintains, that a dispute as to whether there were instructions only arose when they sought an additional payment. When the additional fees were not forthcoming, the filed a notice to cease acting and the subsequent Bill of Costs.
  6. The Applicant further maintains that the fees in dispute emanates from the representation of the respondent in HCCCOMM No 119 of 2016. Throughout the many applications and responses presented before the court, the Respondent maintains that the Applicant lacked instructions to represent and objected to all the items raised in the Bill of Costs.
  7. The Applicant's maintains that there was an implied retainer by the conduct of the Respondent and that the same did not need to in writing. He urged the court to find the same and direct the Taxing Master to proceed with the taxation of his Advocates-Client Bill of Costs.
  8. Throughout the various responses in the applications before the court the Respondent maintains that there was no retainer agreement to the Advocate /Applicant to establish a Client-Advocate relationship between the Advocate/Applicant and the Respondent.
  9. I note from the annexure to the Application that there is no letter from the client confirming or even acknowledging the aspect of representation by the Applicant in the matter. I also note that the cheque payment of Kshs 100,000/- was drawn on the Account of the Respondent but on the face of the Receipt acknowledging the payment the name of Kenneth Kimani Gitere is appearing. No explanation has been give as to the relationship between the 1<sup>st</sup> defendant and the respondent who was the 6th defendant in the suit.
  10. Whereas contracts similar to an Advocate- Client agreement may be commenced orally where the party instructing is a person and not a legal entity, courts have held that Limited liability companies, being corporate person can only operate through its directors or officers and that for an agreement to be formalized, there must be a resolution from the Board of management commencing the same or a duly signed letter by an authorized officer of the company. This is as was held by the courts in the matter of



County Council of Bureti v Kennedy Nyamokeri T/A Nyamokeri & Company Advocates [2006] eKLR where the court stated:-

“it is imperative that the instructions of a public authority be in writing just like in the case of a company or a public corporation because such public authority can only act through its established organs.”

11. Further in the matter of Wilfred N Konosi T/A Konosi & Company advocates v Flamco Limited [2017] The Court of Appeal observed as follows:-

“The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.”

12. As observed above, I find no nexus between the Advocate / Applicant and the respondent in this matter to warrant a determination that a retainer agreement exists to lead to a taxation of an advocates-client bill of costs as between them. The cheque alone is not proof of the retainer agreement barring a letter from an authorized officer of the Respondent confirming indeed the same was paid as fees. I also note that the Applicant in his documents filed in court did not even exhibit a verifying affidavit from an authorized officer of the respondent. This would have been at least a confirmation that indeed he had some form of instructions from the respondent to act on its behalf in the matter.

13. In conclusion therefore I find no evidence to confirm a retainer agreement existed between the Applicant and the Respondent. I therefore hold that the application before me lacks merit and it is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL 2023.**

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**J. W. W. MONGARE**

**JUDGE**

**In The Presence Of:-**

- 1. No appearance for the Applicant.**
- 2. Mr. Njiraini for the Respondent.**
- 3. Sylvia- court Assistant**

