



**Mwaniki Gachuba t/a Mwaniki Gachuba Advocates v Hatari
Security Guards Limited (Miscellaneous Cause E770 of 2021)
[2023] KEHC 17605 (KLR) (Commercial and Tax) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CAUSE E770 OF 2021
JWW MONG'ARE, J
MAY 19, 2023**

BETWEEN

MWANIKI GACHUBA T/A MWANIKI GACHUBA ADVOCATES ... ADVOCATE

AND

HATARI SECURITY GUARDS LIMITED RESPONDENT

JUDGMENT

1. Before the court is a chamber summons application dated 30/6/2022 brought under rule 11(2) of the [Advocates Remuneration Order](#).
2. The applicant, who is the client, sought an order to have the ruling of the taxing master dated 30/6/2022 set aside and the bill of costs dated 15/10/2021 struck out. In the alternative, the applicant sought to have the bill of costs dated 15/10/2021 remitted back for taxation before any taxing officer.
3. The application is based on the grounds that the Deputy Registrar (DR) erred in taxing the bill of costs without first making a determination whether an Advocate/client relationship existed between the parties herein and that the DR erred by awarding the Advocate an excessive amount in instruction fees by increasing the fee to Ksh.500,000/- from Ksh.35,280/- without any justification as no documentary material was placed before her to appreciate the documents that were filed in Public Procurement Administrative Review Board Application No. 107 of 2017 and/or the time spent by the Advocate in handling the said matter.
4. The Advocate opposed the subject application via a replying affidavit sworn on 25/1/2023 by Mwaniki Gachuba.



5. In the said affidavit the Advocate averred that on 20/12/2017, he received instructions from a Mr. Peter Maina to represent all the interested parties in the Request for Review No.107 of 2017 to wit; Kleen Homes Security Services Limited, Hatari Security Guards Limited, Mocam Security Services Limited, Tofada Security Services and Gyto Success Limited and that he truly believed that the said Mr. Peter Maina was the applicant's bona fide agent to whom it had delegated the power to instruct him in the matter.
6. The Advocate averred that the applicant was aware or ought to have been aware that that he had filed a Notice of Appointment and Memorandum of Response on its behalf but did not protest or revoke his instructions and therefore ratified and/or acquiesced with his appointment by the said Peter Maina; that he attended all court session in the Public Procurement Administrative Review Board on behalf of the applicant and the applicant neither protested nor requested for his name to be expunged from the record as its Advocate.
7. Further the Advocate averred that the applicant approved of his representation by executing the resultant contract thereof on 29/12/2017; that whereas the Advocate-client agreement was not written, the same was inferred from Mr. Peter Maina's instructions and the applicant's ratification of the same by conduct and acquiescence.
8. The Advocate averred that the ruling of 30/6/2022 ought to be set aside and the Advocate-client bill of costs re-taxed in accordance with schedule 11 of the *Advocates (Remuneration) (Amendment) Order 2014* and the value of subject matter being the tender award sum of Ksh.21,146,880/- in order to obviate injustice against him.
9. Having considered the pleadings and documents filed in this matter, the first issue for determination is whether an Advocate/client relationship existed between the parties herein.
10. The applicant asserted that an Advocate-client relationship does not and has never existed between the parties and that the DR erred in failing to consider this fact before taxing the bill of costs.
11. Conversely, the respondent asserted that he received instructions from one Mr. Peter Maina to represent all the interested parties in the Request for Review No.107 of 2017 and that he was under the impression that Peter Maina was a bona fide representative of the applicant.
12. Further, it was argued that the issue of the existence or lack thereof of an Advocate-client relationship was brought to the attention of the DR through the applicant's Advocates letter dated 5/3/2022 (annexed as SMK-2 in the applicant's supporting affidavit.) However, in the ruling of the taxing master dated 15/10/2021, the DR failed to consider this issue in its entirety before taxing the said bill of costs.
13. That despite the fact that there is evidence that the Advocate appeared before the Public Procurement and Administrative Review Board on two occasions on behalf of the interested parties and that he filed a notice of appointment claiming to represent all of the interested parties, there is no proof that the applicant appointed or allowed Peter Maina to appoint the Advocate to act on its behalf.
14. There is also no proof adduced by the Advocate to prove that Mr. Peter Maina acted on behalf of the applicant in appointing him. In fact, the said Mr. Peter Maina is a director of the company Kleen Homes Security Limited and has no association with the applicant company.
15. Having considered all the above arguments by the parties, I find that the Advocate has not tendered any evidence in the form of correspondence between the Advocate and the client or documentary evidence to indicate that the Advocate was under the instructions of the applicant. I find that the taxing master erred in failing to consider the fundamental issue of whether an Advocate-client relationship existed in the first place before taxing the bill of costs.



16. Having found that was no such Advocate-Client relationship, the ruling of the Registrar dated 30/6/2022 is forthwith vacated and set aside and the bill of costs dated 15/10/2021 struck out and/or dismissed with costs of this application to be borne by the Advocate.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF MAY 2023.

.....

J. W. W. MONG'ARE

JUDGE

In the Presence of: -

- 1. N/A for the applicant/Client.**
- 2. Mr. Gaya holding brief for Mr. Kurui for the Advocate/respondent.**
- 3. Sylvia- Court Assistant**

