



Ngaiywa Ngigi & Kibet Advocates v Invesco Assurance Co. Ltd (Miscellaneous Civil Application 84 of 2018) [2023] KEHC 3649 (KLR) (2 May 2023) (Ruling)

Neutral citation: [2023] KEHC 3649 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CIVIL APPLICATION 84 OF 2018**

DK KEMEL, J

MAY 2, 2023

BETWEEN

NGAIYWA NGIGI & KIBET ADVOCATES ADVOCATE

AND

INVESCO ASSURANCE CO. LTD CLIENT

RULING

1. The firm of Ngaywa Ngigi & Kibet Advocates filed a notice of motion dated October 22, 2019 pursuant to section 51(2) of the *Advocates Act* seeking for orders namely, that judgement be entered in favour of the applicant against the respondent for the sum of Kshs 79,273/= being the certified costs due to the applicant as against the respondent. The application also seeks for costs.
2. The said application was scheduled for hearing on several occasions and that each time the respondent, despite being served, failed to file a response or even enter an appearance. As this state of affairs were ongoing, rival notices of change of Advocates were filed by the firm of Ngaywa & Kibet partners LLP and Joe Ngigi & Company Advocates. This thus led to a dispute as to which law firm should prosecute the application. It turned out that the original law firm of Ngaywa Ngigi & Kibet Advocates had earlier reached an understanding wherein there was a split whereby Ngaywa & Kibet partners LLP was registered while Joseph Ngigi & Company Advocates was also registered. According to the affidavit of Moses Olando Ngaywa, other than the head office in Nairobi, there were branches in Kakamega, Naivasha and Kabarnet and that there was an understanding that he takes charge of matters in the western region while Joseph Njoroge Ngigi took care of Nakuru, Narok and Laikipia counties and that Vincent Kemboi Kibet retained Baringo and other counties. According to the affidavit of Joseph Njoroge Ngigi, his erstwhile partners, Moses Olando Ngaywa and Vincent Kemboi Kibet did resign from the applicant firm and that he annexed the affidavits and letters of resignation. Moses Olando Ngaywa also annexed a copy of a deed of settlement duly signed by the three partners and vide clause six thereof, it was agreed that briefs given to the partnerships Ngaywa Ngigi and Kibet Advocates by Invesco Insurance Company Limited should be shared equally among the partners. It was further



agreed in the deed of settlement that the partners were to act in good faith and co-operate in the implementation of the terms of the deed of settlement.

3. This court directed the erstwhile partners to reach an understanding and thereafter conclude this matter but they stuck to their guns thereby forcing this court to reserve this matter for directions.
4. I have given due consideration to the rival standpoints by Mr Ngaywa and Mr Ngigi through the advocates they sent to holed their respective briefs. It is not in dispute that the three partners have since split and established new outfits. It is also not in dispute that the deed of settlement dated July 17, 2019 did not capture as to what would become of the several pending matters in various courts and who was take which matters. Had this been captured, then the present scenario would not have arisen since the erstwhile partners are now scrambling over those matters by filing rival notices of change of advocates. The averment by Mr Moses Olando Ngaywa that each partner was to take over matters in their region of domicile does not seem to agree with the deed of settlement as the same was not captured therein. Hence, the failure to include the said issue in the deed of settlement is now a source of anguish among the erstwhile partners. No wonder, they have thrown the dispute to this court for determination. However, as rightly averted by Mr Ngigi in his rival affidavit sworn on January 22, 2023 *vide* paragraph 9 thereof, the dispute on the deed of settlement could be litigated in a different forum. That being the position, the issue for determination is which of the advocates is entitled to the proceeds of this cause?
5. As noted above, both law firms are claiming a stake of the cherry and now seek the courts intervention. Indeed, this is a difficult task in new of the fact that the advocates have not taken their dispute regarding the deed of settlement to the appropriate forum. The only Solomonic wisdom that I know of is the one where King Solomon was requested by one of the women, in a dispute over a child, had requested him to cut the child into two so that each woman takes half the body of the slain child. From the deed of settlement, it is apparent that the erstwhile partners appear to suggest that all proceeds from previous matters were to be shared equally between them. That much can be discerned. However, the partners herein one all out to obtain the certified costs for their keeps. Allowing one of the partners to access the certified costs without the dispute on the deed of settlement being sorted, will cause prejudice to the other partners. It is my considered view that the certified costs should be paid to the original law firm and to be accessed once the partners have resolved their dispute on the deed of settlement. As the respondent has failed to file a response to the application dated October 22, 2019 or lodge an appeal or review of the certificate of taxation dated October 9, 2019, the same should be allowed as prayed.
6. In view of the a foregoing observations, the following directions are hereby issued:
 - a. The application dated October 22, 2019 filed by the law firm of Ngaywa Ngigi & Kibet Advocates Is allowed as prayed.
 - b. A decree for the sum of Kshs 79,273/= be and is hereby issued in favour of Ngaywa Ngigi and Kibet Advocates as against the respondent.
 - c. The firms of Joe Ngigi and Company Advocates and Ngaywa and Kibet partners LLP. Advocates are directed to present their dispute on their deed of settlement before the appropriate forum and thereafter access the aforesaid sums upon conclusion of the dispute.
 - d. This order do apply to High Court Misc applications numbers 80/2018, 81/2018 and 53/2018. Mutatis Mutandis.

Orders accordingly

DATED AND DELIVERED AT BUNGOMA THIS 2ND DAY OF MAY 2023



D. KEMEI

JUDGE

In the presence of:

No appearance for Ngaywa..... For applicant

No appearance for Respondent

Kizito Court assistant

