



Manza Consultancy Ltd t/a JST Work v Martha Mbugua t/a Martha Mbugua & Company Advocates (Miscellaneous Commercial Application E622 of 2019) [2023] KEHC 22033 (KLR) (Commercial and Tax) (5 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22033 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS COMMERCIAL APPLICATION E622 OF 2019
DAS MAJANJA, J
SEPTEMBER 5, 2023

BETWEEN

MANZA CONSULTANCY LTD T/A JST WORK APPLICANT

AND

**MARTHA MBUGUA T/A MARTHA MBUGUA & COMPANY
ADVOCATES RESPONDENT**

RULING

1. The application for consideration before the court is the Chamber Summons dated 02.12.2019 made under Paragraph 11 of the *Advocates Remuneration Order* (“the Order”) seeking to set aside the ruling of the Deputy Registrar, as Taxing Officer, dated 19.11.2019 dismissing the Applicant’s application dated 28.05.2019 in HC Comm Misc Appl. No. E98 of 2019 (“the Reference”). The application is supported by the affidavit of Ms Natalia Mohamed sworn on the same date. It is opposed by the Respondent (“the Advocate”) through her replying affidavit sworn on 06.03.2021. The Respondent has also filed a Notice of Preliminary Objection dated 17.01.2020.
2. The facts leading to this Reference are as follows. The Advocates filed an Advocate- Client Bill of Costs dated 10.04.2019 against the Applicant herein in HC Comm Misc Appl. No. E98 of 2019. The Applicant filed an application dated 28.05.2019 seeking to strike out the Bill of Costs on the ground that there was no Advocate-Client relationship between the parties. The Applicant argued the Advocate was hired by a firm by the name of ASAL to offer consultancy services which were not legal in nature and that she was paid. The Advocate disputed this fact and contended that she was engaged as a Legal Consultant to provide legal services.
3. The Deputy Registrar dismissed the application by a ruling dated 19.11.2019 (“the Ruling”). He considered that from the correspondence between the parties, the parties were in a relationship and



the Advocate was hired to provide services which were not disclosed and it was not clear whether Ms Natalia, who was in contact with the Advocate, acted on her own or was an agent of ASAL. The Deputy Registrar nevertheless held that it was the Applicant to demonstrate that she was an agent of ASAL since at all times she acted and dealt directly with the Advocate and that the Advocate was not party to any arrangement between the Applicant and ASAL. The Deputy Registrar held that the service rendered was of a legal nature and this was established by the nature of the payment and the documents proving that she was to deliver legal services.

4. The Applicant has now filed this Reference. The Advocate challenges the jurisdiction of the court on the ground that this is not a Reference but an Appeal from the Ruling. It also contends that there is no valid objection by Rule 11(1) of the Order and consequently there is no proper application challenging the Ruling.
5. I have considered the Preliminary Objection and I hold as follows. The Deputy Registrar has the jurisdiction to determine whether there is a retainer (see Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited [2017] eKLR). As a result of the decision, the Applicant is entitled to move the court in accordance with Paragraph 11 of the Order. Further, the ruling itself constitutes the reasons for the decision which the Applicant would have obtained by filing its objection under Paragraph 11 aforesaid (see National Oil Corporation Limited v Real Energy Limited and Another [2016] eKLR and Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited [2012] eKLR). Although the Reference ought to have been filed in the same cause as the taxation, it was filed within time. For these reasons I dismiss the preliminary objection.
6. Turning to the substance of the Reference, the issue for determination is whether there was an Advocate-Client relationship between the Applicant and the Advocate. This is a question of fact. In Omulele & Tollo Advocates v Magnum Properties Limited [2016] eKLR, the court held that,

“[A] retainer need not to be in writing unless, under the general law of contract, the terms of the retainer or the disability of a party, to it make writing requisite..... even if there has been no written retainer, the court may imply the existence of a retainer from the acts of the parties in the particular case.”
7. I have considered the written submissions by the parties alongside the record before the court and come to the following conclusion. There is sufficient correspondence to show that the Applicant and the Advocate corresponded on the issue of provision of consultancy services. There is evidence of engagement as demonstrated by a payment to the Advocate as an independent consultant through the Payment Confirmation dated 31.01.2018 by the Applicant. The subject of the payment was titled, “Project: ASAL Consulting Ltd”. The services to be rendered were described as, “Legal review and deliverables against existing projects.” In an email dated 31.01.2018, the Applicant described the objective of the assignment as, “to create a Legal Entity for ASAL consulting in Kenya.” The Advocate was required to advise on the kind of legal entity suit for ASAL in Kenya. Attached to the email was a detailed document prepared by the Applicant setting out the nature of the assignment, the processes required, estimated time to be taken and the like. All these go to show that the Advocate was engaged by the Applicant to act for it in relation to ASAL. ASAL was not the client but rather the subject of the assignment. As to whether the brief was of a legal nature, I find in the affirmative as the incorporation of a legal entity and ancillary advisory services are of a legal nature and were indeed described as such by the Applicant. I therefore do not find any fault on the findings and conclusions of the Deputy Registrar.
8. Additional when the parties’ relationship came to an end, the Advocate through her advocates issued a demand letter dated 28.08.2018 to the Applicant demanding Usd 2,225.00 on account of legal fees for services rendered on the subject. In response to the demand and after discussions with the Applicant’s



advocates, the Applicant paid Kshs. 115,000.00 on account of the outstanding fees and collection costs through the letter dated 04.12.2018. This payment confirms the fact that the Applicant instructed the Advocate to render legal services. As to whether this payment constituted a full and final settlement and or accord and satisfaction was not the subject of this Reference and will be dealt with by the Deputy Registrar at the appropriate time.

9. Before I conclude this ruling, I wish to apologise to the parties for the delay. This was caused by the fact that the matter was mentioned by the Deputy Registrar in my absence on 26.07.2021 and the ruling date given on notice. Unfortunately, the file was not brought to my attention until I called for an audit of all decisions pending my deployment to the Civil Division.
10. For the reasons I have set out I dismiss the Respondent's Preliminary Objection dated 17.01.2020. Likewise, the Applicant's application dated 02.12.2019 is dismissed. The Applicant shall bear the costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF SEPTMBER 2023.

D. S. MAJANJA

JUDGE

