



Corporate Insurance Co. Ltd v Kangethe & Mola Advocates (Miscellaneous Application 1 of 2020) [2023] KEHC 24156 (KLR) (23 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
MISCELLANEOUS APPLICATION 1 OF 2020
GMA DULU, J
OCTOBER 23, 2023**

BETWEEN

CORPORATE INSURANCE CO. LTD CLIENT

AND

KANGETHE & MOLA ADVOCATES ADVOCATE

RULING

1. Before me is an application dated 30th March 2021 filed by Corporate Insurance Company Limited by way of Notice of Motion under Order 51 Rule 1 of the [Civil Procedure Rules](#).
2. The application was filed through counsel Mutubwa & Company Advocates and seeks the following orders:-
 1. (Spent).
 2. (Spent).
 3. That the claimant be granted leave to file its response to the respondent's application dated 28th October 2020.
 4. That costs of the application be in the suit.
3. The application has grounds on the face of the Notice of Motion that the advocate/respondent filed a Bill of Costs against the client/applicant under Makueni Miscellaneous Application 122 of 2019, that the Bill of Costs was heard and determined by the court on 18th December 2019, that the advocates fees were settled in full, that the advocate/respondent went on to file a reference dated 28th October 2020 under the case number herein, that the client was not able to relate the matter to the previous miscellaneous application due to the change in the case number and was only able to relate the two matters on 15th March 2021 when the matter herein had already been heard in the absence of the client/applicant and that the client/applicant wishes to oppose the application.



4. The application was filed with a supporting affidavit sworn on 30th March 2021 by Linda Olweny a Legal Officer of the client/applicant Corporate Insurance Company Ltd, which affidavit amplifies the grounds of the application.
5. The applicants is opposed through a replying affidavit sworn on 4th June 2021 by Paul Gicheru Advocate practicing in the firm of Kangethe & Mola Advocate, in which it is deponed that the application is an abuse of the process of the court and made in bad faith, that the application in question was served and a hearing scheduled for 4th March 2021, that the earlier application dated 28th October 2020 was also served, and that the failure to instruct counsel and attend the proceedings was inexcusable.
6. This application was canvassed through written submissions. In this regard, only the client/applicant's advocate Mutubwa & Company filed written submissions which I have perused and considered. The advocate/respondent's counsel on the other hand, did not file written submissions, and I take it that they rely on the replying affidavit filed.
7. In considering this application, I have to bear in mind that under Article 25 of the Constitution, the right to fair hearing is one of the fundamental rights that cannot be limited in any circumstances.
8. I have also to bear in mind the provisions of Article 50(1) of the Constitution of Kenya, which provides as follows:-

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(1) Every person has the right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
9. The facts of this application are easy to discern. An application for execution of costs was filed, heard and determined in another miscellaneous application. Then the advocate filed this reference under another number. The client who is an insurance company has several similar cases against them. They delayed in instructing counsel herein until the reference application was heard on 4th March 2021 and ruling date set for 27th April 2021. This application was filed on 26th April 2021. No ruling has been delivered to the reference application yet.
10. Having considered the undisputed facts, the reasons given for the delay in instructing counsel to come on record, the provisions of Articles 50(1) of the Constitution, as well as Article 159(2) of the Constitution, and the fact that a ruling has not yet been delivered in the reference application, in my view it will be a denial of the right to fair hearing if this court shuts out the applicant from participating and filing their response to the reference application.
11. I am of the view that the advocate/respondent will not suffer prejudice as an award of costs will suffice as adequate compensation.
12. I thus allow the application dated 30th March 2021 and order as follows:-
 - i. The claimant be and is hereby granted leave to file its response to the respondent's application dated 28th October 2020.
 - ii. The said response will be filed at Makueni and served within fourteen (14) days from today.
 - iii. The application dated 28th October 2020 is hereby reopened for fresh hearing at Makueni court.



iv. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED THIS 23RD DAY OF OCTOBER 2023 VIRTUALLY FROM
VOI.**

GEORGE DULU

JUDGE

