



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kiveu t/a M/S M Kiveu Advocates v Wambani alias Zebedayo Mariko (Miscellaneous Civil Application E002 of 2024) [2024] KEHC 14349 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14349 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CIVIL APPLICATION E002 OF 2024**

**AC BETT, J**

**NOVEMBER 15, 2024**

**IN THE MATTER OF ADVOCATES (REMUNERATION) (AMENDMENTS) ORDER, 2022  
IN THE MATTER OF TAXATION OF ADVOCATE CLIENT BILL OF COSTS**

**BETWEEN**

**MICHAEL KIVEU T/A M/S M KIVEU ADVOCATES ..... ADVOCATE**

**AND**

**ZEBEDAYO WANYONYI WAMBANI ALIAS ZEBEDAYO MARIKO ..... CLIENT**

**RULING**

1. The Applicant approached this Court vide the Notice of Motion application dated 24<sup>th</sup> April, 2024 seeking to strike out the Respondent's Bill of Costs dated 15<sup>th</sup> January, 2024 arising from Butali SRM MCLE Case No 72B of 2018.
2. The application is anchored on grounds advanced in the supporting affidavit of the Applicant wherein he vehemently denies the existence of an advocate/client relationship with the Respondent.
3. The Applicant asserts that he retained the firm of M/s Momanyi Manyoni & Co. Advocates to represent him in the aforementioned matter and to whom he has already settled their fees in full.
4. The Applicant submits that he was never served with the Bill of costs and this court should issue summons to the process server for cross-examination. However, I note that the Applicant avers that he was given a bundle of documents by his seven (7) year old grandson who said he had collected them along the road. The documents included the Bill of Costs. I believe that to summon the process server for cross-examination in the face of the fact that the Applicant acknowledged that he has received the Bill of Costs would be a waste of judicial time.
5. The Applicant further contends that that the Bill of Cost dated 15<sup>th</sup> January, 2024 is an abuse of the Court process as there is a comparable Bill of Costs dated 26<sup>th</sup> October, 2023 filed in Kakamega H.C



Misc. Civil Application No 9 of 2023 relating to the proceedings in Butali SRM MCLE Case No 72B of 2018.

6. The Application is opposed vide the Replying Affidavit dated 2<sup>nd</sup> May, 2024 wherein the Respondent attaches various documents including; Notice of Change of Advocate dated 17<sup>th</sup> March, 2022, a Notice of Intention to act in Person dated 13<sup>th</sup> October, 2023 and a Notice of Withdrawal dated 30<sup>th</sup> April, 2024.
7. This Honourable Court is thus called upon to determine two pivotal issues: first, whether an advocate-client relationship existed between the Applicant and the Respondent, and second, whether the Bill of Costs dated 15th January 2024 constitutes an abuse of the court process.

### **Analysis and Determination**

8. It is a well settled principle that the existence of an Advocate-Client Relationship is the bedrock upon which the jurisdiction of the taxing master to entertain the bill of costs flows.
9. This position was restated by the Court of Appeal in the case of *Wilfred v Flamco Ltd* [2017] eKLR when it held thus:

“The issue whether an Advocate – client relationship exists in taxation of a Bill of costs between an Advocate and his or her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order.

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

10. The Applicant has repeatedly and emphatically submitted that no such relationship existed. Instead, he affirms that he instructed the firm of M/S Momanyi Manyoni & Company Advocates to represent him.
11. The pleadings and documentation before this court reinforce this assertion as it is the said firm that drew the pleadings and subsequently appeared for the Applicant in court. During the course of the proceedings, several advocates, including Mr. Kiveu, held brief for the Applicant’s advocate.
12. However, a careful examination of the record reveals that the said firm ceased to represent the Applicant upon filing of the Notice of Change of Advocates dated 17<sup>th</sup> March, 2022 by the Respondent as demonstrated by annexure 1(a) to the Respondent’s Replying Affidavit dated 2<sup>nd</sup> May, 2024.
13. Further examination of the subject proceedings reveals that the Respondent appeared for the Applicant as from 12<sup>th</sup> May, 2022 to 13<sup>th</sup> October 2023. Noteworthy, there is no documented objection from the Applicant, even in instances where he was personally present. As a matter of fact, on 21<sup>st</sup> February 2023, Mr. Kiveu duly represented the Applicant and led him as he gave evidence in support of his case. This is proved by the annexure marked “ZWW” 3 attached to the Applicant’s Supporting Affidavit. From the proceedings, Mr. Kiveu was absent on 7<sup>th</sup> July 2023 during defence hearing. The Applicant informed the court that his Advocate was unwell. On subsequent dates Mr. Kiveu attended court and proceeded with the case. At no point did the Applicant object to Mr. Kiveu’s representation.
14. Additionally, the Applicant’s Notice of Intention to act in Person dated 13<sup>th</sup> October, 2023 and lodged on the same date, clearly indicates that he elected to represent himself, in place of Mr. Kiveu, Advocate, the Respondent herein.



15. In view of the evidence before this court, this court finds that there indeed existed an advocate-client relationship as between the Applicant and the Respondent.
16. Addressing the second issue, the Applicant argues that the existence of a similar Bill of Costs filed in Kakamega High Court Misc. Application No E009 of 2023, involving identical parties and matters, undermines the legitimacy of the present Bill of Costs, rendering it an abuse of the court process.
17. However, what has been presented before this Court is merely an application seeking leave to tax the Bill of Costs. The Applicant has also failed to provide substantive evidence to clarify the disposition of the said application and its correlation to the instant matter.
18. Whereas in his undated affidavit in support of the application the Applicant avers that ruling is pending, his Counsel in his submissions claims that ruling was delivered and is attached to the Applicant's affidavit. I have perused the annexures and have not seen any ruling. What is clear is that the Applicant vehemently disputed retainer of the Advocate to act on his behalf and that is why the Deputy Registrar referred the application to this court.
19. In any event, it can be inferred that the Respondent, vide the Notice of Withdrawal dated 30<sup>th</sup> April, 2024 and filed on 2<sup>nd</sup> May 2024 as shown in annexure 1(c) to the Respondent's Replying Affidavit dated 2<sup>nd</sup> May 2024, withdrew the impugned application in its entirety. In the absence of contrary evidence, the Applicant's claim that this Bill of Costs constitutes an abuse of process cannot lie.
20. In conclusion, I find that the Application dated 24<sup>th</sup> April 2024 is unmeritorious and hereby dismiss it with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 15<sup>TH</sup> DAY of NOVEMBER 2024.**

**A. C. BETT**

**JUDGE**

In the presence of:

Muthama for Abok for Respondent/Advocate

Osango for Client/Applicant

Court Assistant: Polycap

