



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 166 OF 2013

HON. PATRICK SIMIYU KHAEMBA.....PLAINTIFF

VERSUS

KENYA ELECTRICITY TRANSMISSION.....1ST DEFENDANT

KENYA POWER & LIGHTING CO. LTD.....2ND DEFENDANT

RULING

(On Application for Joinder of Advocate as Interested Party)

1. By a Notice of Motion dated **15/10/2021**, the Applicant herein moved this Court under **Order 1 Rule 10** of the **Civil Procedure Rules, 2010**. The Motion sought the following Orders:

(a) ...spent

(b) **The firm of Sifuna & Sifuna Advocates be enjoined in this suit as an interested Party in the Plaintiff's Notice of Motion Application dated 30/08/2021 and in these and all proceedings relating to costs in this suit.**

(c) **On being enjoined, Sifuna & Sifuna Advocates be granted leave to file a response in the Plaintiff's said Notice of Motion dated 30/08/2021 and to thereafter participate in the Application, in the current proceedings, and in all proceedings relating to the costs in this suit.**

(d) **Costs of this Application be provided for.**

2. The Application was grounded on a number of points stated on its face, and the Supporting Affidavit of one Prof. Nixon Sifuna Advocate sworn on **15/10/2021**. Incidentally, the Applicant herein, Sifuna and Sifuna Advocates is a law firm the name and style which Prof. Nixon Sifuna practices his legal expertise. It was opposed through an Affidavit sworn by one Patrick Simiyu Khaemba on **22/10/2021**.

Background

3. The brief background of the Application is that the Plaintiff/Respondent herein sued the Defendants on **6/12/2013**. It was accompanied by an Application under Certificate of Urgency filed on **9/12/2013**. The documents were filed through the firm of **Ms. Sifuna and Sifuna Advocates** who appeared on behalf of Plaintiff until **30/08/2021** when a Notice of Change of Advocates was filed by the firm of Walioli & Hussein Advocates. The record has it that on **24/09/2014** a consent was recorded, settling the matter as between the Plaintiff and the 1st Defendant. It also shows that the suit against the 2nd Defendant was dismissed for want of prosecution on **18/10/2018**.

4. It was averred by the Applicant that said law firm was paid by the Plaintiff an initial sum of Kenya Shillings One Hundred Thousand (**Kshs. 100,000/=**) being start up fees upon which it filed pleadings. A copy of a cheque for the same amount was attached to the Supporting Affidavit as **Annexure NS 2b**. It is the Applicant's claim that after a while the suit against the 1st Defendant was negotiated and ultimately withdrawn. But as I indicated in the previous paragraph, the consent of **24/09/2014** marked the suit between the two as "**settled fully**". It appears that the suit against the 2nd Defendant was also concluded after some time. After that the 2nd Defendant filed a party and party Bill of Costs for taxation.

5. On the one hand, the Applicant depones further that some time after **August, 2021** the Applicant herein was served with an Application dated **30/08/2021**. In the Application, the Respondent denied ever instructing the Applicant to file the said suit. He deponed further that the Respondent has, in that Application, stated that the Applicant by filing the instant suit was on a frolic of his own and that he - the firm of **Sifuna & Sufina Advocates** - should be ordered to personally pay the party and party costs. He swore further that the Respondent caused

another law firm, **Ms. Walioli & Hussein Advocates**, to file a Notice of Change of Advocates and file that application thereby effectively removing them from participating in the proceedings yet the orders sought in the Application are adverse to said lawyer or law firm.

6. The Applicant deponed further that justice demands that he defend himself against the allegations, answer them, and provide relevant facts, documents and law to vindicate them since the Respondent has lied on oath, in the Affidavit sworn by him on **30/08/2021** to which the Applicant also needs to file a Replying Affidavit. Moreover, he swore that the allegations of fraud, lack of integrity having been levelled against him and his firm required that the Applicant rebuts them and brings out the fact that the Respondent is a person who lacks integrity, probity and credibility. He drew attention to an instant where he alleged the Respondent lied on oath in **Kisumu ELRC Cause No. 20 of 2015** on **7/09/2015**. He then swore that in the circumstances the Respondent lacked “moral pedestal” to talk about anyone’s integrity.

7. It appears not all visitors to homes and offices are good people. I say so because from the deposition in **Paragraph 9** of his Affidavit, Prof. Sifuna states that the Respondent’s unnamed girlfriend did the unthinkable: stole. It is not clear how many times she visited the Applicant Advocates’ offices. But one thing is clear: she did so with not only a clear purpose but she executed her intent with precision. That is why, lastly, the Applicant swore at **paragraph 19** of his Affidavit that the Respondent had in the recent past used his girlfriend to steal original correspondence from him with the intent of depriving him of the chance to properly “...respond to the blatant lies, allegations, innuendos and accusations...” he made against the Applicant. It did not come out whether or not the alleged theft was reported to the police but these are issues besides the instant Applicant. All the above facts were restated in the ground that supported his instant Application.

8. On the other hand, the Respondent stated at **paragraph 4** that “As my Advocate, he is precluded by professional ethics from filing pleadings in this matter in opposition to me as I have not waived my Advocate-client right to confidentiality.” He swore that the Applicant wanted to abuse and oppress him by denying him a fair trial by revealing confidential information, and the Application was an abuse of the Court process. He then stated that he was constitutionally protected against self-incrimination and the right will be infringed if the Applicant was enjoined in the matter. He went on to say that the Applicant had no cause of action to join or defend in the claim and the suit was against the Plaintiff and Defendant. To him, there was no provision in the Civil Procedure Rules and Act for an “interested party”. He then swore that the Applicant intended “to cover up his misdeeds against” him. Thus, he contended that the Applicant having filed Grounds of Opposition to the Application dated **30/08/2021** the instant Applicant is an afterthought and should not be entertained since it is designed to circumvent a preliminary objection he filed to those Grounds of Opposition. He deponed that “...the Applicant is an officer of the Court and the Court should hold him to account in all his conduct before the Court.” At **paragraph 16** of the Affidavit, he relied on the Supporting Affidavit to the Application of **30/08/2021** and preliminary objection to show “the fraud was being perpetrated against” him in the Court.

9. A more intriguing fact brought out in the Further Affidavit of the Applicant sworn on **3/11/2021** was that after Mr. Walioli Wabwoba came on record for the Respondent, he was appointed by him and presented to the County Assembly to serve in the County Government of Trans Nzoia to serve as the County Attorney but he continued to sign documents as a private practitioner. The Applicant then reiterated the contents of the earlier Affidavit. He deponed that Client-Advocate confidentiality does not avail to the Respondent since he denied on oath that he was the Plaintiff’s client, that he was not the Plaintiff, he never instructed the Applicant to file this suit, and that the Applicant filed the suit on his own accord, and that since the Respondent stated on oath that his client was the County Government of Trans Nzoia and not him then client-advocate confidentiality did not arise. He then stated that he will not reveal secrets of the Respondent’s ill deals since the Respondent has never confided in him. He deponed that by the Respondent filing the Application sought to be challenged he waived client-advocate privilege especially by alleging criminality and lack of integrity. Lastly, he stated that his participation in the intended proceedings is only limited to the taxation proceedings arising from the suit, in which the Respondent has sought to argue that the Applicant is ordered to pay personally. Therefore, he said that since the Respondent denied ever instructing him to act for him, he should have nothing to worry about.

10. It is upon the above winding history, accusations and counter-accusations, facts that this Court directed the parties file their submissions on the Application. They did. The Application presents a unique situation: where an Advocate seeks to be enjoined in a matter he alleges to have acted for a party before.

Determination

11. I have carefully considered the Application. I have applied my mind to all the issues raised in the Affidavits in support thereof and the Affidavit sworn in opposition to the Application. I have deeply and carefully taken into account the submissions by both counsel and the law: both statutory and case law.

12. The Applicant submitted that he had represented the Plaintiff in the suit since **2013** to the time it was withdrawn in **2014**. He submitted that it was up to **30/08/2021** when his law firm was removed by a Notice of Change of Advocates by Walioli & Hussesin Advocates and filed the instant Application. In the Application he denied ever instructing the Applicant to file this suit but rather it was the County Government of Trans Nzoia and he sought to exonerate himself from paying the Party and Party Costs of the 1st Defendant. He reiterated how the Respondent accused Prof. Sifuna Advocate of fraud and conspiracy to defraud and failure to inform him of the 1st Defendant’s taxation of its Bill of Costs. He also repeated in the submissions the prayer the Respondent had sought in his Application for the firm of Sifuna and Sifuna Advocates to personally pay the 2nd defendant’s taxed party and party costs. He submitted further that to the extent that the Respondent had made serious allegations and sought adverse orders against the Applicant, it was just that the Applicant be enjoined to the sought; that in so doing it would give him audience in the matter as against the advice given to the Respondent by “junior inexperienced advocates who out of sheer curiosity, naivety, mischief, ingenuous craft, misadventure and lack of hindsight misled and advised him on the law relating to the right to be heard, the right to fair play, the right to fair trial and...natural justice...” He submitted that by having been removed from the record by the Notice of Change of Advocates, he had been denied of audience and that can only be remedied by an order of enjoinder in the suit. He then relied on the cases of **Ridge v Baldwin [1963] All ER 66 at 81** wherein the court said that natural justice must obtain in all decisions. He relied on the case of **Daniel Musau Mbithi v Rael Kavili Munyao & another; Timothy Ngila Nzuki & 6 others (Parties) eKLR** in which the courts held that no man should be condemned unheard. Lastly, he cited the case of **Onyango Oloo v Attorney General [1986-1989], EA 456** which also discussed the principle of natural justice.

13. The Respondent submitted that the Affidavit referred to by Prof. Sifuna relates to a matter before another Court in Kisumu and that the Applicant has not disclosed all material facts in that matter. He then submitted that there would be a miscarriage of justice if this court relied

on the affidavit on John Lewis said in any event that would be Subjudice. Further he stated that even though the Respondent presented the name of Mr. Walioli for vetting, the appointment was not to a public office. He then emphasized that if Prof. Sifuna would be permitted to file grounds of opposition to the Application, it would irretrievably compromise the advocate-client confidentiality which would be a conflict of interest and breach of professional ethics by counsel against his former client. Moreover, he submitted that “*Sifuna is not a party to these proceedings and has never filed a Defence up to now in relation to this suit which seems to have ended long ago.*” He then put it that the matter having been filed in 2013 and the 2nd Defendant’s Bill of Costs over 7 years later the **Limitation of Actions Act** operates since it outlaws proceedings after six years of expiry of contractual relationships. He then urged for dismissal of the Bills of Costs for being filed out of time. He finally argued that there is neither judgment nor ruling or order awarding costs against the respondent in this matter hence there exists no basis for taxation of costs and urged the Bills and Certificates of Costs to be struck out. Lastly, he summed up that the **Civil Procedure Act and Rules** does not provide for interested parties in matters began by Plaintiff hence the Applicant should not be enjoined in these proceedings.

14. At the outset, I point out that most of the submissions made by the Respondent herein relate to and directly apply to the merits or otherwise of the Application dated 30/08/2021. Also, whereas counsel for the Applicant submitted that this suit was settled in 2014, the record bears that only the suit between the **Plaintiff** and the **1st Defendant** was settled in 2014. That left the suit between the **Plaintiff** and the **2nd Defendant** pending in Court until 18/10/2018 when it was dismissed for want of prosecution on account of an Application dated and filed by the 2nd Defendant. It therefore follows also that the argument by the Respondent herein and the submission by his Counsel that the matter was determined over **seven years ago** so as to bring in an issue expiry of contractual claims by way of **Limitation of Actions Act, Chapter 22 Laws of Kenya** is not the correct position but that is left to the time of considering the merits of the Application dated 30/08/2021. And even if the 2014 position as submitted by the Respondent would have been correct, since the alleged relationship between the two contenders herein was that of employer (Respondent herein) and employee (Applicant herein), the Court would have to consider when that relationship ended in order for time to start running. To my mind, that ended when the employer terminated the services of the employee. But that is an issue for consideration in the Application of 30/08/2021 if parties pursue the line. Having carefully considered all the above, three issues commend to me for analysis:

(a) *Whether the Applicant has fulfilled the requirements of joinder in order to be enjoined in this matter*

(b) *Whether the Applicant should be given leave file a response and participate in the current proceedings and all those relating to costs in this suit.*

(c) *Who bears the costs of this Application?*

15. It is now settled that a party wishing to be joined in a matter must move the Court when the proceedings are still be alive in the court. This Court stated that in **FLORENCE NAFULA AYODI & 5 OTHERS V JONATHAN AYODI LIGURE V JOHN TABALYA MUKITE & ANOTHER; BENSON GIRENGE KIDIAVAI & 67 OTHERS (APPLICANTS/INTENDED INTERESTED PARTIES) [2021] eKLR** that the proceedings he wishes to participate in may either be at “the nascent or other stages but must be alive.” In **Leonard Kimeu Mwanthi v Rukaria M’twerandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties) [2021] eKLR**, her Ladyship L. Mbugua J stated that “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...” In the instant case, the Application has been made when the costs have been taxed but issues have arisen therefrom. In any event they are yet to be executed. Therefore, the suit is still alive and the application is made within the proper time.

16. In regard to whether or not the Application should have been made in the first place, submissions were made by counsel for the Respondent that the Application dated 15/10/2021 cannot be allowed because both the **Civil Procedure Act and Rules** does not provide for interested parties in matters began by Plaintiff. This Court found the submission strange. The submission along that line demonstrated either lack of sound legal knowledge or deliberate intent to mislead the Court. Whereas there is no express reference to the phrase “Interested Party” in the **Civil Procedure Act and Rules**, the procedure is clearly provided for. The starting point is **Order 1 Rule 10** of the **Civil Procedure Rules, 2010** as amended in 2020 which provides for Addition of “a necessary” party. It provides that:

“The court may at any stage of the proceedings, either upon or without the application of either party,...order that...the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

17. Following the above provision, courts have without number indicated that the procedure exists in law. I need not belabor the point. Suffice it to say that after the promulgation of the **2010 Constitution**, the procedure relating to that is now firmly and clearly stipulated in the statutes and subsidiary legislation of the country.

18. In terms of the specific reference to the phrase in the law relating to this level of Court, it is governed by a special procedure whose source is **Legal Notice No. 117 of 2013**. This was gazetted on 28th June, 2013 as **The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013**, (I refer to them as the **Mutunga Rules, 2013**). Its definition is given in **Rule 2** of the **Rules** and the procedure in **Rule 7**.

19. **Sub-rule 1 of Rule 7** provides that “A person, with leave of the Court, may make an oral or written application to be joined as an interested party.” It has in mind a case where a person moves the court. When he chooses to do so, he has to be granted leave of the court first before applying to be enjoined. This is what the Applicant has done in the instant case but in writing specifically.

20. Again, the proposed interested party cannot actively participate in proceedings unless he/she has been granted leave of the Court to do so. In terms of the guidance by the Supreme Court the Application should be made formally. This was stated by the Court in the case of **Francis Kariuki Muruatetu & Another v Republic & 5 Others, Petition 15 as consolidated with 16 of 2013 [2016] eKLR**.

21. The case set out three principles to be followed by a successful party in such a case. At **paragraph 37** the Court state that the Applicant(s) must show:

(i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

(ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

(iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

22. This Court then needs to determine whether or not the Applicant has met the above conditions. I start by considering a pertinent question: Is there a nexus between the Bill of Costs and the setting aside sought herein? I think so. Part of the connection is brought out by the Applicant himself when he states that the Applicant in **Misc. Civil No. 14 of 2021** seeks to rely on the Certificate of the Taxing Master to base his Advocate-Client Bill of Costs.

23. Besides that, there are allegations of fraud and/or collusion as against the Applicant in the Kitale **Miscellaneous Civil Case No. 14 of 2021** file who was the Advocate in the current suit where allegations have been levelled against him. These are very serious allegations which cannot be wished away. They may, if proven, lead to other repercussions against the said advocate. Should they be left to be dealt with by other persons who do not represent him or may not have his interest at hand? The Advocate having been replaced from the record by virtue of a Notice of Change of Advocates, cannot participate in the proceedings of that process wherein the allegations have been raised unless he or his agent is permitted to join them. At the same time he cannot apply to be added as either a defendant or a party in the matter. He can only apply to be joined as an interested party. If the application dated **30/08/2021** and all the allegations therein on fraud, conspiracy to defraud and collusion are to be heard to the exclusion of the former Advocate, whether they turn out to be true or false, he will be condemned unheard. The rules of natural justice are clear: one of them is that a person must never be condemned unheard. Our legal system is not one of the Rule of the Jungle where carnivorous animals maul both herbivorous and other weak carnivorous ones without giving them a chance to defend themselves or survive. We are in a modern society which is run in a Constitution that provides for rights of citizens. It may not be very comfortable to others who may want to take advantage of others but it is one of the best documents that Kenyans ever gave themselves. They should guard it jealously now or they will be crying and shedding tears and blood in the future if they leave it to be mutilated and changed at the whims of the few that look at personal interested. The decisions of **Ridge v Baldwin [1963] All ER 66** and **Daniel Musau Mbithi v Rael Kavili Munyao & another; Timothy Ngila Nzuki & 6 others (Parties) eKLR** guide on this issue.

24. Were the Respondent to challenge the taxation merely on the arguments that some of the items were taxed at higher amounts than allowed by law, that would have made the matter lighter. It could have put the Advocate at a point of looking for a higher standard to convince the Court the stake he has in the outcome of the taxation. But in the instant case, the allegations are that he together with the other advocates representing the decree holder colluded to enter into a consent on the costs taxed, which gave rise to the impugned certificate.

25. Thus, in regard to the principles in the **Francis Muruatettu case**, first, the court needs to determine whether the Applicant has a direct interest or stake in the proceedings in relation to the Costs in the instant case. It is not in dispute that the proposed interested party is a law firm - Ms. Sifuna & Sifuna Advocates (herein referred to as "*former Advocates*") which participated in proceedings in the instant case from the inception to the time a Notice of Change of Advocates was filed by the firm of Ms. Walioli & Hussein Advocates. From the institution of the Suit, the former Advocates filed this suit while acting for the Plaintiff herein. However, from the Application filed by the Respondent on **30/08/2021**, a dispute has arisen on whether or not the former Advocates had instructions to represent him or even file the suit. The Respondent insists that the former Advocates were instructed by the County Government of Trans Nzoia and not him.

26. Besides, the Respondent has made, against the former Advocates, allegations of fraud, collusion, conspiracy to defraud him, lack of integrity, among many other aspects of impropriety. He has then prayed in that Application for ordered that the said former law firm be held to account for their misdeeds and the said law firm be ordered to pay the taxed costs of the 2nd Defendant. In so far as such allegations have been levelled against the former law firm in the Application dated **30/08/2021**, the Applicant has a direct stake in the outcome of that Application. The allegations have placed the Applicant in the direct path of the crossfire and he cannot stand and watch being slain by unfriendly fire. That stake is identifiable and proximate in relation to the outcome of the Application. To demonstrate this point, the Court has been invited to determine in the said Application whether the Advocate conspired to commit a fraud. Again, the Court is to determine whether or not the former firm represented the Applicant herein or had instructions to represent him. Who else can demystify this apart from the person who filed the suit. The stake is so direct to the suit that it is inseparable from it. It cannot be the Respondent alone who can tell the story about these allegations. He actually may not be in a position to tell the side of the issues better than the Applicant. His belief is that the Applicant herein was instructed by the County Government of Trans Nzoia. Then, it is upon the Applicant to state who instructed him to file the suit, why his law firm should not be ordered to personally pay the costs due to the 2nd Defendant or other, why he acted on a frolic of his own to the detriment of the Applicant, among many other allegations. In the **Judicial Service Commission -vs-Speaker of the National Assembly & Another [2013] eKLR** the court stated that:

"...an interested party is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings."

27. It is this Court's view that the Applicant not just a stake but a serious one: should it be determined that he did all the alleged acts, it directly impacts on his practice as a lawyer and ultimately his other rights and freedoms provided for in the Constitution. He shall be directly affected by the expected decision in the Application dated 30/08/2021.

28. Further, the orders sought in the Application if allowed as against the Respondent will adversely affect him or his law firm. As things stand he is watching the proceedings "in *Viusasa*", that is to mean, from an impenetrable glass screen because he was removed from them by

way of a Notice of Change of Advocates being filed and served on him and other counsel in the matter. He and his law firm might never have the chance to be heard if they are not enjoined at this stage.

29. The Respondent on the other hand has sought to demonstrate that he will suffer prejudice if the orders sought are granted. His argument is that there exists Advocate-Client privilege or confidentiality which will be breached if the Applicant is enjoined in this matter as prayed. What the Court wonders is, when did the Applicant become an Advocate so as to bring about the stated relationship? Of course, he states elsewhere that the Applicant is supposed to be held to account for his misdeeds against him? The Court is left to wonder what the misdeeds were and how they came about. Either the Respondent or the Applicant is giving lies to the Court (and lying on oath constitutes the offence of perjury). Only when the allegations of the party who alleges will be answered that the Court will be in a position to weigh the facts and make a finding.

30. Two subsidiary issues arise from the above submission: to what extent should Courts enforce Advocate-Client privilege or confidentiality? How should Advocate-client privilege be handled *vis-à-vis* the rules of natural justice and the right to fair hearing of another party? Regarding the first one, the law on Advocate-Client privilege and confidentiality is provided for under **Sections 134 and 136 of the Evidence Act, Chapter 80** Laws of Kenya. That privilege is not absolute. It can be waived under certain circumstances. The proviso to **Section 134** is to the effect that the Advocate will not be required not to disclose anything that he observes in the course of his employment by his client which shows that any crime or fraud has been committed by the client. In my understanding, the proviso is wide and it encompasses situations where the Advocate is of the opinion that his client has lied on oath hence committed perjury. Those are the allegations that I see in the **paragraphs 2, 3, 4, 8 and 11** Replying Affidavit by Professor Sifuna and **paragraphs 8, 9, 11, 12, 13 and 18** of the Further Affidavit by the same deponent. Again, **Section 136(2)** provides “***If any party to a suit or proceeding calls any advocate,...as a witness, he shall be deemed to have consented to such disclosure as is mentioned in section 134(1) of this Act only if he questions such witness on matters which, but for such question, the witness would not be at liberty to disclose.***” The Section refers to a situation where a party calls his Advocate as a witness. In the instant case, that is not the case. But the circumstances are such that the Advocate has been put on the defensive position. Shall he keep quiet? Shall he be condemned unheard?

31. Indirectly the Applicant has been called upon by the party (the Respondent herein but Applicant in the Application dated **30/082021**) to give evidence but as an individual defending his ‘case’, that is to say, giving “**his side of the story**” in relation to the matters in question in the Application dated **30/08/2021** raised against his law firm. He then becomes a competent and compellable witness. Thus, the party is deemed to have waived the advocate-client privilege afforded him by law.

32. Again, the rules of natural justice come into play when a person makes allegations against another before a judicial body that has jurisdiction to determine those allegations. These, no one can run away from. Natural justice requires that a party is given a fair hearing and adequate notice to prepare for that hearing. Actually the 2010 Constitution has incorporated the principles of natural justice its entire grain. **Article 22 (3) (d)** requires the Court to observe “rules of natural justice.” Also, **Article 25(c)** gives all citizens the right to fair trial. The Article clearly provides that the right shall not in any way be limited. In my view the right begins from when an individual makes allegations or accusations against another and spans to the right to fair hearing as provided for under **Article 50**. That ‘accused’ has a right to be heard. If this Court were to proceed to determine the Application dated **30/08/2021** in absence of the Applicant herein, it shall have denied him the illimitable right fair trial and the other right of being heard. Whoever makes allegations against another ought to be well guided that he better prepares for a rejoinder from the ‘accused’ and where that entails existing privileges, the waivers shall be given within the law stipulated except in situations of absolute privilege.

33. Lastly, the court to be satisfied whether or not the Applicant has set out his case and/or submissions it intends make before the Court and demonstrated that his case is not replica of what other parties have before the Court. To answer this one has to look at the affidavit and submissions filed on behalf of the Applicant. The Applicant argues that he intends to show that he was instructed by the Respondent and that he is not supposed to be condemned to pay the party and party costs since, according to him, the law does not condemn an Advocate to meet the costs of a case on behalf of an instructing client. I am persuaded that these issues have shown a case clearly set out. These are not issues to be canvassed between the parties to this suit. They are issues that can only be best determined between the Applicant and the Defendant. Since they have been raised in this suit it is the only proper forum in which they can be determined.

34. I am satisfied that the proposed interested party has met the threshold set out in the **Muruatetu case** (Supra). I therefore, in the interest of justice, proceed to allow the Application in terms of **prayers (b) and (c)** at this stage. Thus, **I grant leave to the Applicant to be enjoined as**

Interested Parties in this suit, to the extent that he is to participate in the Application dated 30/08/2021 and any other subsequent one(s) related thereto, and any proceedings in relation to the taxation of the costs herein. I also direct that the Applicant files and serves not only a Notice of Appointment as an Interested Party within the next **three (3) days** but also files and serves a Replying Affidavit to the Application dated **30/08/2021** within the next **seven (7) days** of this order. The Applicant shall file and serve a Supplementary Affidavit together with submissions within **five (5) days** of service of the Replying Affidavit. The Respondent shall file and serve written submissions within **five (5) days** of service of the Applicant’s. Time shall run in accordance with the Civil Procedure Rules. Each party’s submissions should not exceed strictly **four (4) pages of New Times Roman Font 12 of 1.5 Spacing**.

35. The costs of this Application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 8TH DAY OF DECEMBER, 2021.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.