



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL MISC. APPLICATION NO. 174 OF 2017
IN THE MATTER OF THE ADVOCATES ACT CAP 16
AND
IN THE MATTER OF AN AGREEMENT FOR FEES
BETWEEN THE ADVOCATE AND THE CLIENT

W. G. WAMBUGU & CO. ADVOCATES.....APPLICANT

-VERSUS-

EMMA MUTHONI WAMBAA.....1ST RESPONDENT

WINGFIELD NG'ANG'A REGERU.....2ND RESPONDENT

CATHERINE NYANGUI REGERU.....3RD RESPONDENT

ESTHER WANJA REGERU.....4TH RESPONDENT

STEPHEN KAGECHE.....5TH RESPONDENT

VIRGINIA WANJIRU.....6TH RESPONDENT

PAULINE WANJIKU WAMBAA.....7TH RESPONDENT

DENNIS WAMBAA REGERU.....8TH RESPONDENT

JOSEPH KIBATHI REGERU.....9TH RESPONDENT

DANSON MUCHUGIA REGERU.....10TH RESPONDENT

PIUS WAITHAKA REGERU.....11TH RESPONDENT

RULING

1) Emma Muthoni Wambaa, Dennis Wambaa Regeru, Joseph Kabati Regeru, Danson Muchugia Regeru and Pius Waithaka Regeru, being the 1st, 8th, 9th, 10th and 11th Respondents/ Applicants respectively, took out the Amended motion dated 28th May 2019 in which they sought for

i. Spent.

ii. Spent.

iii. THAT this honourable court be pleased to review, vary and set aside the ex-parte judgment made on 17th November, 2017 and all consequential orders therefrom against the 8th – 11th Respondents/Applicants.

iv. THAT in the alternative, this honourable court be pleased to review, vary and set aside the judgment entered on 17th November, 2017 and all consequential orders as regards the 1st, 8th, 9th, 10th and 11th Respondents/Applicants herein.

v. THAT costs of this application be provided for.

2) The motion is supported by the affidavits of Dennis Wambaa Regeru, Joseph Kabati Regeru, Danson Muchugia Regeru, Pius Waithaka Regeru and Emma Muthoni Wambaa. When served with the motion W. G. Wambugu & Co. Advocates, filed the replying affidavit of Wanja G. Wambugu to oppose the application.

3) When the motion came up for interpartes hearing, learned counsels appearing in the matter made oral submissions. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have also considered the rival oral submissions and the authorities cited.

4) It is the submission of the 8th – 11th Respondents/Applicants that they were never served with a Hearing Notice for 11th October 2017 of the motion dated 10.4.2017, hence the aforesaid motion proceeded for hearing *ex parte* as against them. They averred that they have a defence with triable issues in that they had no **client-advocate** relationship with the Applicant/Respondent.

5) The Respondents/Applicants further argued that the consent on legal fees which gave rise to the judgment was executed in ignorance and or in misapprehension of material facts therefore the same is not binding on the 1st, 8th – 11th Respondents/ Applicants.

6) This court was urged to find that there is an error apparent on the face of record in that in paragraph 2 of the supporting affidavit wherein the Applicant/Respondent deponed that she was instructed by the Respondents/Applicants to act for them in **Nairobi P & A no. 2051 of 2007 in The Matter of The Estate of Lawrence Regeru Wambaa**, deceased which is utter falsehoods.

7) They also aver that they were never served with the Decree and the Notice to Show Cause which must precede the execution process. The Respondents/Applicants were emphatic that they were represented by the Applicant/ Respondent in Nairobi Succession Cause no. 2059 of 2007 hence she cannot recover any legal fees from them. This court was therefore urged to set aside the *ex parte* judgment.

8) In response to the Respondents/Applicants' submission, the Applicant/Respondent stated that she filed the application for entry of judgment dated 10th April 2017 on the basis of an agreement entered between the Applicants, other members of the family and herself.

9) It is said that the agreement arose from the services rendered to all the beneficiaries of the estate except for three. The Applicant/Respondent pointed out that Emma Muthoni Wambaa in fact deponed in paragraph 1 of her replying affidavit dated 24.7.2017 that she was swearing the same in her capacity as the administratrix of the Estate of Lawrence Regeru Wambaa and that she had authority of the Respondents/Applicants to swear to oppose the motion seeking for entry of judgment.

10) After a careful consideration of the material placed before this court together with rival oral submissions, it is clear from the averments and the conduct of the 1st, 8th – 11th Respondents/Applicants that they conscientiously executed the agreement dated 7th November 2013 having read its contents and after discussions on the fees payable to the Applicant/Respondent.

11) It is also apparent that the Respondents/Applicants were served with court processes but they opted to authorize the 1st Respondent to appear on their behalf. I am also satisfied that despite the 1st, 8th – 11th Respondents/Applicants denying having instructed the Applicant/Respondent to represent them that the Applicant/Respondent has shown that there was a client advocate relationship between them. There is no denial that the Applicant/Respondent appeared for the Respondents/ Applicants in the following matters: **Malindi Court of Appeal no. 40 of 2014, Malindi C.A in Civil Application no. 22 of 2014, Malindi H.C E.L.C no. 58 of 2014 and Nairobi J.R. Misc. App. No. 75 of 2014.**

12) There is no dispute that this court entered judgment in favour of the Applicant/Respondent in the sum of kshs.4,950,000/= vide its ruling delivered on 17.11.2017. This court was convinced that the parties willingly and conscientiously entered into an agreement on the advocate's fees payable.

13) This court has now been invited to review the aforesaid decision on the basis that the application for entry of judgment was determined *ex parte*. It is also clear that this court considered the responses filed by the Respondents/ Applicants to resist the motion as enjoined by law. It is now clear that the application does not meet the requirements of an application for review. Consequently, the motion dated 28th May 2019 lacks merit, the same is dismissed with costs to the Applicant/Respondent.

Dated, Signed and Delivered at Nairobi this 18th day of July, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent