



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPL. NO. 274 OF 2016

**JOHN BROWN SHILENJE T/A J.B.SHILENJE & COMPANY ADVOCATES FORMERLY
C. BAKHOYA & COMPANY ADVOCATESAPPLICANT/ADVOCATE**

- V E R S U S -

KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT/CLIENT

RULING

1. The substantive matter before this court is the Advocate/client Bill of costs between John Brown Shilenje t/a J.B. Shilenje & Co. Advocates (formerly T.A.C Bakhoya & Co. Advocates) and Kenindia Assurance Co. Ltd.
2. When the aforesaid Bill of Costs was placed before Hon. F. Rashid, the learned Taxing Officer, for taxation, the learned Deputy Registrar made an order referring the same to this court to determine the question on retainer.
3. It is the submission of the respondent/client that the retainer of the law firm of J.B.Shilenje & Co. Advocates by the respondent is disputed. It is the submission of the respondent/client that it retained the services of the law firm of C. Bakhoya & Co. Advocates in the primary proceedings which would ordinarily give rise to the claim for fees herein. The respondent further pointed out that the applicant/advocate has not shown the nexus between J. B. Shilenje & Co. Advocates which have filed this Bill of Costs and the firm of C. Bakhoya & Co. Advocates.
4. The respondent/client has consequently beseeched this court to strike out the present Bill of Costs as constituting an abuse of the court process.
5. It was also pointed out that the letter dated 12.4.2010 written by the respondent constituted fresh instructions issued to the firm of J. B. Shilenje & Co. Advocates and therefore the filing of a notice of change of advocates by the firm of J. B. Shilenge & Co. Advocates taking over from C. Bakhoya & Co. Advocates could only be sued to claim fees for services rendered after such Notice of Advocates was filed.
6. The respondent/client by way of submissions proposed for the claim to be split into two. First, that items nos. 67 to 89 could form a basis for a claim by J.B. Shilenje & Co. Advocates.
Secondly, items nos. 1 – 66 do not relate to any services rendered by the firm of J. B. Shilenje & Co. Advocates.
7. I have considered the submissions of the applicant/advocate and it would appear this issue was not

dealt with substantively the way the respondent/client did. The applicant did not explain the nexus between the two firms of advocates.

8. There is no dispute that the firm of C. Bakhoya & Co. Advocates were retained by the respondent/client to defend the Bill of Costs between the firm of Janet Mulwa & Co. Advocates and Kenindia Assurance Co. Ltd vide Nairobi H.C. Misc. No. 1100 of 2008.

9. The aforesaid instructions were acted upon and the taxation was concluded in 2009. The firm of J.B. Shilenje & Co. Advocates was officially instructed to come on record in place of C. Bakhoya & Co. Advocates on 12th April 2010.

10. With respect, I agree with the submissions of the respondent client that the letter of instructions given to the firms of J.B. Shilenje dated 12th April 2010 could not have had any retrospective effect and hence could not be used to claim fees in respect of services rendered prior to period when C. Bakhoya & Co. Advocates were on record.

11. In the end, I find the preliminary objection to be well founded. Having failed to show the nexus between the firm of J. B. Shilenje & Co. Advocates and that of C. Bakhoya & Co. Advocate, I issue an order striking out the claim over items nos. 1 to 66 of the Bill of Costs filed by John Brown Shilenje t/a J.B. Shilenje & Co. Advocates. The Bill of costs dated 1.6.2016 be amended to reflect this order. I direct that the Bill of Costs in respect of items nos. 67 to 89 be placed before the Deputy Registrar of this court for taxation. Costs of the preliminary objection to await the outcome of the taxation proceedings.

Dated, Signed and Delivered in open court this 2nd day of June, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent