



**Wachenje Mariga Advocates LLP v Gulam (Miscellaneous Application
E047 of 2022) [2024] KEELRC 13639 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13639 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E047 OF 2022**

**AK NZEI, J
MAY 16, 2024**

BETWEEN

WACHENJE MARIGA ADVOCATES LLP APPLICANT

AND

DR. ADIL HUSSAIN GULAM RESPONDENT

RULING

1. The cause herein was commenced by way of an Advocate/Client Bill of costs dated 16th June 2022 and filed in this Court by the Applicant, Wachenje & Mariga LLP, on 17th June 2022. The said bill of costs was subsequently taxed by this Court's Deputy Registrar, sitting as a taxing officer. The Deputy Registrar delivered a Ruling on 8th May 2023, taxing the said Advocate/Client bill of costs at ksh. 445,340. The taxed costs were duly certified, and a certificate of Costs was duly issued on 26th July 2023.
2. On 22nd September 2023, the Advocate/Applicant filed a Notice of Motion dated 18th September 2023, seeking the following orders:-
 - a. that the certificate of costs dated 26th June 2023 be deemed as a decree and judgment of this Court.
 - b. that judgment be entered accordingly against the Respondent in the sum of kshs. 445,340 with interest at the rate of 14% per annum from the date of taxation until payment in full, and a decree to issue forthwith.
 - c. that costs of the application be provided for.
3. The application was opposed by the Respondent/Client vide a replying affidavit sworn by his Advocate on record on 30th November 2022. On 17th October 2023, however, Counsel for the parties herein



told the Court that parties had agreed to settle the said application (dated 18th September 2023) By Consent, and recorded the following consent orders:-

- “(a) that judgment be, and is hereby entered for the Advocate against the Client for kshs. 380,240.
- b. that payment of the amount be effected within 45 days of today.
- (c) that in default of payment execution to issue.”

4. On 14th December 2023, the Respondent/Client filed an evenly dated Notice of Motion seeking the following orders:-

- a. that the Court be pleased to grant a stay of execution of the judgment entered on 17th October 2023, and the warrants of attachment issued on 8th December 2023 pending the hearing and determination herein inter-partes.
- b. that at the inter-partes hearing, the Court be pleased to adopt the Applicant’s proposal on settlement of the decretal sum in ten (10) equal instalments with the 1st instalment due 30 days from the date of this application.
- c. that the Court be pleased to take this matter for mediation (if the prayer for payment by instalments fails).
- d. Costs.

5. The application, which is before me for determination, is supported by an affidavit sworn on 14th December 2023; and having been presented before this Court on 15th December 2023 under a certificate of urgency, the following orders were made:-

- “(a) (a) the application is hereby certified urgent.
- (b) there will be an interim stay of execution herein on condition that the Respondent/Applicant pays a sum of kshs. 150,000 to the decree holder in part liquidation of the decretal sum within 14 days of today.
- (c) Mention on 22/01/2024.”

6. The said application is opposed by the Advocate/decreed holder vide a replying affidavit of David Mvoi Wachenje, Advocate sworn on 10th January 2024.

7. It is noted that the subject matter in the application herein is a consent judgment entered on 17th October 2023. A consent judgment is in the nature of a contract, and cannot be changed and/or altered except by a further consent of the parties involved. No further consent has been presented to this Court, and no vitiating factors regarding the consent judgment entered on 17th October 2023 have been demonstrated to this court.

8. The summary of the foregoing is that the Notice of Motion dated 14th December 2023 is without merit, and the same is hereby dismissed with costs.

9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 16TH MAY 2024.

AGNES KITIKU NZEI



JUDGE.

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Applicant

.....Respondent

