



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC NO. 18 OF 2015

EUNICE C. SOL.....PLAINTIFF

VERSUS

BOMET WATER COMPANY LTD.....DEFENDANT

RULING

This ruling is in respect of the objection raised by Mr. Matwere that Mr. Mugumya ought to cease acting for the Defendant herein. Since the objection was raised in court on 14/5/18 in Mr. Mugumya's absence, the matter was mentioned on 21/5/18 when both Counsels submitted on the issue of representation.

I have considered the submissions of both Counsels. It is common ground that Mr. Mugumya's employment with the County Government of Bomet came to an end on 30/9/2017. It is Mr. Matwere submission that Mr. Mugumya ought to have ceased acting for Bomet Water Company Ltd, the Defendant herein from that date and any services rendered by him from 1/10/2017 were without instructions from the Defendant. He goes as far as submitting that any documents filed by Mr. Mugumya any time after 30/9/17 ought to be expunged from the record and that he does not believe that Mr. Mugumya ought to be paid for it. He submits that whatever services he rendered while in the employment with the County Government of Bomet do not entitle him to costs as he was earning a salary.

On the other hand Mr. Mugumya submits that after he ceased working for the County Government of Bomet, he received a telephone call from the Managing Director Bomet Water Co. Ltd requesting him to continue acting for them. He submits that it is on the basis of these oral instructions that he continued filing documents and appearing in court for the Defendant until 14/5/2018 when he received a letter from the Acting Managing Director to the effect that the Defendant has never instructed him to act for them and that they had instructed Mr. Matwere to represent them in the matter.

I have noted that Mr. Matwere filed his Notice of Change of Advocates on 29/1/2018, 4 months after Mr. Mugumya ceased working for Bomet County Government. The Notice does not indicate that it was served upon Mr. Mugumya or the firm of P.K. Sang & Co. Advocates. It is no wonder Mr. Mugumya continued acting for the Defendant as he appears to have been kept in the dark.

Even after Mr. Matwere filed his Notice of Change of Advocates, he did not attend court when the matter was mentioned on 5/2/2018 and 19/3/18 instead it was Mr. Mugumya who attended court.

It was not until 14/5/18 that Mr. Matwere appeared in court armed with the letter dated 10/5/18 from Bomet Water Co. Ltd stating that they had instructed him to act for them and that they had never instructed Mr. Mugumya.

Mr. Mugumya has indicated that he would not have continued acting for the Defendant if they had made it clear that he should cease acting. He says that he is ready and willing to hand over the file to Mr. Matwere. He however insists that his fees ought to be paid by the Defendant. He submits that the letter dated 10/5/18 was only written after he indicated to the Defendant that he intended to file his Bill of Costs.

Mr. Matwere has submitted that if Mr. Mugumya has any claim in terms of costs from the Defendant he ought to present his bill to the Defendant for consideration though he insinuates that they will not pay for services rendered without instructions.

My reading of this scenario is that the Defendant is not being very forthright. Even though it is clear that Mr. Mugumya left the County Government of Bomet in September 2017, they were okay with him acting for them as long as he did not demand any fees as they took no immediate steps to appoint another advocate yet they were aware that the matter was pending in court. I am inclined to believe Mr. Mugumya when he says he received verbal instructions to continue acting for the Defendant. This would explain the absence of Mr. Matwere from court between January and 14th May, 2018. It is only fair that the Defendant pays Mr. Mugumya's fees for the period between October, 2017 to 10/5/2018 when he continued representing them, no doubt with their acquiescence and knowledge. If the said fees are not paid Mr. Mugumya is at liberty to file his Bill of Costs for taxation by the taxing master of this court.

Regarding the documents filed by Mr. Mugumya after 30/9/2017 I see no good reason why they ought to be expunged from the record as it is clear that the Defendant was aware that he was acting for them. In the meantime Mr. Mugumya may hand over the file to Mr. Matwere as he pursues his costs in the normal manner, to avoid delaying the expeditious disposal of the matter.

Dated, signed and delivered at Kericho this 24th day of May, 2018

J.M. ONYANGO

JUDGE

24/5/2018

In the presence of:

Mr. Matwere for the Defendant

Mr. Mugumya also appearing for the Defendant

No appearance for the Plaintiff

Court Assistant; Rotich