



Madzayo Mrima & Jadi Advocates v County Government of Kilifi (Environment & Land Miscellaneous Case 45 of 2021) [2024] KEELC 242 (KLR) (30 January 2024) (Ruling)

Neutral citation: [2024] KEELC 242 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND MISCELLANEOUS CASE 45 OF 2021
FM NJOROGE, J
JANUARY 30, 2024**

BETWEEN

MADZAYO MRIMA & JADI ADVOCATES APPLICANT

AND

COUNTY GOVERNMENT OF KILIFI RESPONDENT

RULING

1. This ruling is in respect of the Applicant's Notice of Motion dated 25th September 2023 seeking the following orders: -
 - a. This honourable court be pleased to set aside the consent dated 7th June 2022 and filed in court on 8th June 2022;
 - b. That this honourable court be pleased to reinstate the Advocate-Client Bill of costs dated 28th October 2021;
 - c. That costs of this Application be in the cause.
2. The Application is founded on the grounds set out on its face and the Supporting affidavit sworn by Farida K. Jadi an advocate of the High Court of Kenya in conduct of the matter who deponed that the Applicant filed its Advocate-Client Bill of costs on 4th November 2021 and the same was served on the Respondent who instructed an Advocate to come on record and subsequently a response to the Bill of Costs was filed. She stated that parties herein negotiated the bill of costs and the same was withdrawn for out of court negotiations and a consent was filed to that effect. She further stated that it's been a year since the consent was filed and no consensus has been reached over the bill of costs and that there is no likelihood of an agreement being reached by the parties.



3. The Application came up for hearing on 20th November 2023. The court issued directions that the Respondent file a response to the application on the same day and the application be canvassed by way of written submissions.
4. The Applicant was granted 7 days to file submissions and the Respondent 7 days to file submissions after service. At the time of writing this opinion only the applicant had filed his submissions. I have also noted that the respondent did not also file any response to the motion. That said, it is clear that the motion is unopposed. However, every matter must be tried on its own merits whether opposed or not; it is not for the court to grant blanket orders simply because an application or a case has not been opposed.
5. I have considered the application and the submissions in support thereof. the application seeks to set aside what it refers to as a consent order entered into between the parties in the matter.
6. However, this court is at a loss as to which consent order the applicant refers to or relies on as none is attached to the application.
7. It is correct that on 4/11/21 a bill of costs was filed and on 2/06/22 a notice of withdrawal was filed, executed by the applicant's advocates alone, wholly withdrawing the same bill of costs. There is no copy of the consent order alleged to have been filed on 8/6/2022 in the court file. The rule that parties must be bound by their pleadings extends to applications. This court can not grant what has not been sought in the application, or what is obviously in stark contrast with the record it has perused. It is on that ground that I can not therefore grant prayer no 1 in the instant notice of motion. If that first prayer in the motion can not be granted, it is axiomatic that prayer no 2, which is predicated on it, can not be granted. For those reasons, the application dated 25/9/2023 is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF JANUARY 2024.

MWANGI NJOROGE

JUDGE, ELC MALINDI.

