



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

MISC APPLICATION NO. 31 OF 2017

IN THE MATTER OF: THE ADVOCATES ACT

AND

IN THE MATTER OF: TAXATION PF COSTS BETWEEN ADVOCATE AND CLIENT

AND

THOMAS K'BAHATI T/A

K'BAHATI & CO ADVOCATES.....ADVOCATE APPLICANT

VERSUS

BEENA DINIT VIRCHAND MALDE (SUED AS THE

EXECUTOR OF THE WILL OF VICHAND

MULJI MALDE DECEASED.....CLIENT/DEFENDANT

ARISING FROM HCC (OS) NO.423 OF 2001

BETWEEN

1. JANENDRAH RAICHAND SHAH

2. VIRCHAND MULJI MALDE

3. RAITLAL GHELA SAMAT.....DEFENDANTS

VERSUS

MISTRY VALJI NARAN MULJI.....PLAINTIFF

RULING

1. For determination are the two motions dated 30th January 2018 brought under the provisions of section 3A of Civil Procedure Act seeking orders

a. That the honourable court do make a determination on the issue of instruction to advocate /client.

b. That costs of the application be in the cause

2. The application is supported by the grounds listed on their faces and the affidavit of BEENA DIMIT MALDE in support thereof.

3. The Advocate filed a replying affidavit dated 4th July 2018 in opposition to the orders sought. Mr K'Bahati deposed that indeed the applicant instructed him to represent her in making the application for substitution as well as filing for the probate proceedings. That even if the applicant chose a different advocate to file the probate, the same didn't shield her from being sued for pending bills on account of the deceased. It is K'Bahati's evidence that the law only recognises individual advocates and not a firm for purposes of professional responsibility and/or liability.

4. The parties filed written submissions which I have herein read and considered. From the bills annexed I note that what is being contested is the instructions fees and the getting up fees pursuant to the instructions. Mr K'Bahati has not denied the averment contained in the letter dated 12th January 2018 that he worked with the firm of Lumumba, Mumma & Kaluma at the time instructions were given in HCC No.84 OF 2005. The Respondent has denied via his replying affidavit that he was an associate in the said firm. According to him, he deposed that he worked in the said law firm as a partner at the time when the instructions were given.

5. The Respondent has repeated in paragraphs 6, 7, 9 and 13 that he received instructions while he was a partner at Lumumba, Mumma and Kaluma. Whether the instructions were personal would be an issue between him and his former partners and not an issue between him and his clients. Therefore it is my considered opinion and I so hold that he cannot claim the instructions fees from the applicant as K'Bahati & Co Advocates on the basis of his own admission that the instructions were given before the existence of his current law firm. Secondly, he did not annex evidence that he was a partner and not an employee in the said firm. Thus I hold that the objection is merited and allow the two motions with no order as to costs. This ruling does apply mutatis Mutandis to ELC App. No. 30 of 2017.

Ruling delivered, dated and signed at Mombasa 14th this day of December 2018

A. OMOLLO

JUDGE