



B.M Mungata & Co. Advocates v Mutua & another (Environment and Land Miscellaneous Application E042 of 2021) [2024] KEELC 3516 (KLR) (29 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3516 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E042 OF 2021
A NYUKURI, J
APRIL 29, 2024
IN THE MATTER OF ADVOCATES ACT
AND
IN THE MATTER OF ADVOCATES-CLIENT BILL OF COSTS**

BETWEEN

B.M MUNGATA & CO. ADVOCATES APPLICANT

AND

ROSE KATILE MUTUA 1ST RESPONDENT

MESHACK MUTUA MUSAU 2ND RESPONDENT

RULING

1. The application before court is dated 27th June 2023 filed by the respondents and seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the applicants be allowed to satisfy the decree herein by monthly instalments of Kshs 10,000.00 with effect from 30th July, 2023 until full payment.
 - d. That costs be provided for.
2. The application was based on grounds on the face of it and supported by the affidavit of Meshack Mutua Musau, one of the respondents. He deposed that the suit arose from the bill of costs in regard to ELC Appeal No 23 of 2019 which was taxed at Kshs 231,107/= and is in the same series with



Miscellaneous Application Numbers 43 and 44 of 2021, which were taxed at Kshs 220,810.00 and Kshs 140,510.00 respectively, all totalling to Kshs 592,427/=.

3. He also claimed that the amount being claimed by the respondent in the three matters is colossal and that since they run a small cereal business with no stable income, they are not in a financial position to settle the entire amount at once.
4. He alleged that they stood to suffer substantial loss and prejudice if the respondent proceeds with execution and that they had not refused to pay but were only limited by their financial situation. He urged the court to exercise unfettered discretion to allow the application. He attached authority to swear and a bank statement showing two transactions made in March and June 2023 being deposits of Kshs 10,000/= respectively.
5. The application was opposed. Brian Munyao advocate for the respondent swore a replying affidavit dated 17th July 2023. He stated that the applicants willingly engaged a legal counsel with full knowledge of financial responsibilities. He averred that the respondents had tirelessly worked on the case, invested significant time, effort and resources to secure a favourable outcome. He further stated that the applicants did not object to the taxation and that the instant application is a deliberate delay tactic. It was their contention that the evidence presented by the applicants to support their inability to pay was insufficient as the statement annexed was for an account that seemed to lack any transactions and the court ought to order for disclosure of full statements of account including Mpesa statements. He further deposed that allowing such application would jeopardize the financial stability of the legal profession as the same would be a bad precedent.
6. Counsel further deposed that it was contradictory for the applicants to claim financial struggles while at the same time engaging another firm of M.M Uvyu & Company Advocates, a reputable and successful law firm. He urged the court to apply principles fairness and justice and safeguard the integrity of the legal profession.

Analysis and determination

7. The court has considered the application and the response and the sole issue for determination is whether the applicant has demonstrated that it is in the interests of justice to allow him settle the decretal sum herein by monthly instalment of Kshs 10,000/=.
8. Article 48 of the *Constitution* provides for the right to access to justice. Section 63 of the *Civil Procedure Act* grants this court the power to make orders in the interests of justice. In the instant matter, the respondent/advocate bill of costs was taxed on 15th December 2022 in the sum of Kshs 231,107/=. To date the applicant has not paid any part of the said amount. Having considered the applicant's bank statement which contain two deposits of Kshs 10,000/= each made in March and June 2023 respectively, I am not convinced that that bank statement is a true reflection of the applicant's financial position as they have not shown their financial position before 2023 and it is improbable that a business account would ordinarily operate like a salary account where a fixed amount of Kshs 10,000/= is deposited every month. A sample of two months is not sufficient to demonstrate the applicant's financial position. Allowing the application would mean that the applicants would take 22 months to settle the decretal amount, which in my view would be unjustifiable and a denial of the right to access to justice, which the advocate is entitled to.
9. In the premises, I find no merit in the application dated 27th June 2023, which I hereby dismiss with costs to the respondent.
10. It is so ordered.



DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 29TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:

Ms. Mutuku holding brief for Mr. Mutava for applicant

Mr. Ngure for respondents

Court assistant – Abdisalam

