



**Mura (Suing on behalf of others) v Oluoch t/a AT Oluoch & Co Advocates & 2 others
(Miscellaneous Application 47 of 2017) [2024] KEELRC 111 (KLR) (1 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 111 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 47 OF 2017**

L NDOLO, J

FEBRUARY 1, 2024

BETWEEN

PETER MWANGI MURA (SUING ON BEHALF OF OTHERS) APPLICANT

AND

**ANTHONY OLUOCH T/A AT OLUOCH & CO ADVOCATES 1ST
RESPONDENT**

**THOMAS LETANGULE T/A LETANGULE & CO ADVOCATES 2ND
RESPONDENT**

**SILVIA MALEMBA KITONGA T/A SM KITONGA & CO
ADVOCATES 3RD RESPONDENT**

JUDGMENT

1. This matter was initially heard by Mbaru J who by a judgment delivered on 20th April 2018, dismissed the Originating Summons and directed each party to bear their own costs.
2. Being dissatisfied with the judgment, the Applicant filed an appeal before the Court of Appeal, which directed that the matter be heard afresh before another judge.

The Originating Summons

3. By an Originating Summons dated 13th March 2017, the Applicant seeks the following orders:
 - a. That the 1st, 2nd and 3rd Respondents be ordered to give account and/or details of the distribution of settlement amount and produce all documents and payment schedules pertaining to the distribution of Kshs. 1,300,000,000 and the cost of Kshs. 30,000,000 awarded to the Claimants in HCCC 216/2007, 2019/2007, 255/2007 (consolidated) as ordered in the consent order dated 15th December 2015;



- b. That the 1st, 2nd and 3rd Respondents be ordered to file their respective Advocate-Client Bill of Costs arising out of HCCC 216/2007, 2019/2007, 255/2007 (consolidated) for taxation;
 - c. That the 1st, 2nd and 3rd Respondents be ordered to account in specific terms the deductions made in respect of legal fees, administrative costs and auctioneers fees;
 - d. That the 1st, 2nd and 3rd Respondents be ordered to account for the interest accrued and earned on Kshs. 250,000,000 that was deposited as security for costs for a period of two and half years;
 - e. An order directing that the deduction of legal fees by the 1st, 2nd and 3rd Respondents be set aside for reason that it is harsh, unconscionable, exorbitant and unreasonable with further orders that the costs in question be taxed by a taxing master;
 - f. That any monies resulting from the consent order dated 15th December 2015 in HCCC 216/2007, 219/2007 and 255/2007 (consolidated) held by the 1st, 2nd and 3rd Respondents be released to the Applicants;
 - g. That the Respondents be tasked to explain the status of 62 ex employees of Telkom who were parties to the suit and were excluded in settlement pursuant to the consent order dated 15th December 2015 and are yet to receive the fruits of the decree;
 - h. That the costs of the Summons be borne by the Respondents.
4. The Originating Summons is supported by an affidavit sworn by Peter Mwangi Mura and is premised on the following grounds:
- a. That the Plaintiffs are former employees of Telkom Kenya Limited who were retrenched following restructuring and reorganisation of the Company in June 2006;
 - b. That on 15th December 2015, a consent order was recorded in HCCC 216/2007, 219/2007 and 255/2007 (consolidated) where it was agreed that Telkom (K) Ltd pay the Claimants a lump sum of Kshs. 1,300,000,000 plus agreed legal costs of Kshs. 30,000,000;
 - c. That the consent order was adopted as a decree of the Court;
 - d. That the Respondents have failed, neglected and/or refused to distribute the decretal sum of Kshs. 1,300,000,000 in full in accordance with Clause 10 of the consent order dated 15th December 2015 in HCCC 216/2007, 2019/2007 and 255/2007 (consolidated) and to disclose the mode of distribution;
 - e. That there is an element of breach of fiduciary duty on the part of the Respondents as against the Plaintiffs so far as the enforcement of the consent order dated 15th December 2015 is concerned;
 - f. That the Court has power and jurisdiction to order the Respondents to deliver accounts and documents pertaining to the enforcement of HCCC 216/2007, 219/2007 and 255/2007 (consolidated) as ordered in the consent order dated 15th December 2015;
 - g. That it is only prudent for the Court to summon the Respondents to give a full and transparent breakdown and account for how much money was agreed to pay the Applicants and mode used in dispatching it and the total amount released to the 1st, 2nd and 3rd Respondents;



- h. That the Client Accounts in respect of the settlement amount disbursed by Telkom Kenya Limited ought to be thoroughly investigated and the Plaintiffs paid what is legally owed to them;
- i. That there is grave danger that without the intervention of the Court, the Plaintiffs will lose their hard earned money to the Respondents and the Plaintiffs will be denied the fruits of judgment and decree of the Court dated 15th December 2015;
- j. That there is no prejudice likely to be suffered by the Respondents and it is crucial that the Court protects the interest of the Applicants.

The Respondents' Response

- 5. The 1st and 3rd Respondents filed two replying affidavits sworn by Anthony Tom Oluoch, Advocate and Silvia Malemba Kitonga, Advocate on 6th June 2017 and 29th September 2017 respectively.
- 6. They depone that the parties in HCCC 216 of 2007 as consolidated with HCCC 219 of 2007 compromised the suit by authorizing their respective Advocates to file a consent dated 1st December 2015. The consent was adopted by the Court on 15th December 2015.
- 7. Counsel confirm that the 1st and 3rd Respondents had instructions from the representatives of the two different sets of suits in HCCC No 216 of 2007 and 255 of 2007 as consolidated, and authority to settle the matters, which eventually gave effect to the consent.
- 8. They depone that every Plaintiff in HCCC No 216 of 2007 and 255 of 2007 as consolidated with HCCC No 219 of 2007 were paid on the basis of the consent, upon which they signed discharge vouchers confirming receipt of payment and relinquishing the Advocates from any liability of future suits such as the present one.
- 9. Counsel aver that this suit involves only about 60 individuals, while HCCC No 216 of 2007, HCCC No 255 of 2007 and HCCC No 219 of 2007 as consolidated, involved 997 persons who are not parties to this suit. They therefore maintain that the information sought by the Applicants regarding disbursement of the settlement funds is privileged.
- 10. The 1st and 3rd Respondents challenge the jurisdiction of this Court to entertain a claim as to what ought to have been the amount of Advocates' fees.
- 11. The 2nd Respondent's response is by way of a Replying Affidavit sworn by Larry Mulomi, Advocate. He depones that the suit is an afterthought filed in contravention of the provisions of Section 45(2A) of the *Advocates of Act*, being brought over one year after an agreement between the Plaintiffs and Defendants was made and executed.
- 12. Counsel further depones that the suit was filed in contravention of the provisions of Order 1 Rule 13 (1) and (2) of the *Civil Procedure Rules* with the Applicants riding on a false and illegal authority to institute suit on behalf of all the Claimants whose claims are not similar and whose authorization has been illegally procured.
- 13. Counsel accuses the Applicants of material non-disclosure, being that the Claimants had signed an agreement for legal fees at 30%.
- 14. The 2nd Respondent takes the view that due to the nature of an advocate-client relationship, the 1st, 2nd and 3rd Respondents, being law firms, can only have several or proportionate liability with respect to the specific clients and only for their respective obligations towards their clients. According to the 2nd



- Respondent, it can only give individual account of any payments to members of HCCC 219 of 2007 which has already been done.
15. The 2nd Respondent maintains that the Applicants cannot make a claim for joint liability and can only seek individual liability against the individual law firms as per their instruction agreements.
 16. Counsel lays out a chronology of court processes culminating with a Deed of Settlement between the Plaintiffs and Telkom Kenya, dated 8th August 2014 and a subsequent consent order dated 16th December 2015.
 17. The 2nd Respondent asserts that it expended much time and industry in HCCC 219/2007, as part of the consolidated suits, which it terms as complex and time consuming. The 2nd Respondent therefore justifies the legal fees agreed at 30%, in addition to 1% auctioneer's charges and 2% administrative charges.
 18. The 2nd Respondent avers that all the Claimants who were Plaintiffs in HCCC No 2019 of 2007 have been paid their dues as agreed and have executed discharge vouchers absolving the 2nd Respondent from further liability.

Determination

19. The dispute in this matter arises from an alleged disagreement on legal fees between three law firms and their respective clients.
20. It is not in dispute that an agreement on fees was executed between the Advocates and representatives of the Plaintiffs in the cases giving rise to the agreement. Reading from the Originating Summons, the Applicants are complaining about the interpretation and efficacy of the agreement.

They argue that fees recovered by the Advocates by virtue of the agreement were exorbitant and unreasonable.
21. This is not an ordinary civil dispute but is one that is specifically provided for under the *Advocates Act*. Section 45(2) of the *Advocates Act* provides for variation or setting aside of agreement on Advocates' fees on the grounds that it is harsh and unconscionable, exorbitant or unreasonable.
22. Section 45(2A) of the Act requires that an application in this regard be made within one year after the making of the agreement or within three months after a demand in writing by the Advocate for payment of fees under the agreement.
23. In the submissions filed on behalf of the 1st and 3rd Respondents, reference was made to the decision in *D.N. Njogu & Co. Advocates v National Bank of Kenya Limited* [2007] eKLR where it was held:

“If two parties willingly agree to conceive an idea and the same is put into writing, signed, accepted and executed by the parties, then the court can only be called to intervene in distinct situations...it is not the duty of the courts to write or rather rewrite the contracts for parties... An agreement made between parties on fees and the same evidenced in writing is valid and binding. Such an agreement can only be set aside if an application is made within one year of the making of the agreement.”
24. In this case, the Applicants completely circumvented the procedure set out in the *Advocates Act* and instead chose to proceed as if this were an ordinary civil dispute. There is good reason why this specific procedure exists, in view of the special relationship between an Advocate and their client. I do not think a party is at liberty to depart from it without justifiable cause.



25. Additionally, by their Originating Summons, the Applicants seek omnibus orders some of which would cover persons who were not party to the settlement agreement.
26. For the foregoing reasons, I find and hold that the Applicants' case as presented does not disclose any valid cause of action against the Respondents.
27. The Originating Summons dated 13th March 2017 is therefore disallowed with no order for costs.
28. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE

Appearance

Mr. Kinyanjui for the Applicants

Ms. Opiyo for the 1st and 3rd Respondents

Ms. Opiyo h/b for Mr Letangule for the 2nd Respondent

