



Sheikh & Company Advocates v Mustek East Africa Limited (Miscellaneous Case E043 of 2022) [2024] KEELRC 835 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 835 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE E043 OF 2022
MN NDUMA, J
APRIL 18, 2024**

BETWEEN

SHEIKH & COMPANY ADVOCATES APPLICANT

AND

MUSTEK EAST AFRICA LIMITED RESPONDENT

RULING

1. The applicant in the notice of motion dated 8/2/2024 prays for an order: -
 1. Spent
 2. That pending inter-parties hearing and determination of the application and the applicant's notice of motion dated 7/2/2024, the honourable court be pleased to stay execution of the decree given on 24/10/2023 and order given on 22/1/2024 in this matter and all consequential execution proceedings arising there from against the applicant in this matter and a series of similar matters between parties namely ELRC Mis. Application No. E039/2022 to E044/2022
 3. Costs of the application
2. The application is based on grounds (i) to (iv) set out on the face of the notice of motion and buttressed in the affidavit of Vincent Mwali Olale, advocate on record for the applicant.
3. The gist of the complaint is that the respondent obtained ex parte orders from the court to execute ex-parte decrees against the applicants given in this matter and a series of matters namely ELRC Application No. E039/2022 to E044/2022 on 2/2/2024. That the respondent proceeded to proclaim the applicant threatening to carry away the applicant's office equipment, furniture and accessories, after expiry of 7 days particularly on 9/2/2024.
4. That the respondents obtained the ex parte orders without service of notice to the applicant or its advocates on 22/1/2024



Replying affidavit

5. The respondent opposes the application dated 7/2/2024 and 8/2/2024, vide a replying affidavit of Evans Ochieng, advocate for the respondent in which he deposes that no basis has been laid by the applicant for seeking orders for stay of execution of the judgment on taxed and certified costs and the decree of this court as issued on 24/10/2023.
6. That the applicant does not in the twin notice of motions dated 7th and 8th February 2024 seek any substantive orders as against, the judgement on taxed and certified costs and decree of the court filed on 24/10/2023. This court's decree remains undisturbed.
7. That the primary complaint by the applicant is non-service of the advocates' amended application dated 3/10/2023 that sought entry of judgment on taxed advocate-client costs; and of its hearing notice set for 24/10/2023. That, that allegation is manifesting untrue since the advocate effected physical service of the amended application dated 3/10/2023 upon the claimant's advocates on record. They received, signed and stamped copies on 3/10/2023 at 2 p.m. confirming service.
8. The advocate also effected email service of the hearing notice set for 24/10/2023 on the claimant's advocate, still on record and same was received on 6/10/2023 at 04:30 p.m. from Evans @shikhadvocates.com to the claimant's advocate's address namely olala@libromwebu.co.ke; oscar@libromwebu.co.ke and info@lifonomwebu.co.ke. That all the email addresses have been previous and consistently used for exchange of letters, notices and court documents in the court of the same court proceedings.
9. That the advocate filed the return of service dated 12/10/2023 in this court showing proper service of the amended application dated 3/10/2022 and its hearing notice set for 24/10/2023 all upon the claimant's advocates still on record herein. The return of service is annexed to this application.
10. That on 24/10/2023 the judge, confirmed proper service of both the amended application and its hearing notice upon the claimants' advocate as per established judicial practice.
11. That the claimants were deliberately absent from the court scenario despite a multiple call-over of the case series by the court as per court proceedings of 24/10/2023
12. That the applications are clearly mis-conceived and an abuse of the court process.
13. That advocate-client costs were themselves taxed and certified by the Deputy Registrar on 23/9/2022 for each of the five files. That taxation was done inter-parties vide exchange of written submissions and a reserved taxation ruling delivered.
14. That no reference was ever filed to date challenging the taxation ruling and the 14 days contemplated under Rule 11 of the principal advocates remuneration order (ARO) expired. The taxation therefore stand unchallenged to date.
15. The court granted leave to amend initial application on 2/10/2023 upon a final application dated 8/6/2023, which application was filed on 3/10/2023 for entry of judgment on taxed costs.
16. The application was allowed on 24/10/2023, the same having not been opposed by the claimants who were absent despite having been duly served with both the application and its hearing notice.
17. The application be dismissed with costs.



DETERMINATION

18. The applicant further affidavit dated 16/2/2024 in which it joins issue with the respondent and restates its case as per the twin applications dated 7th and 8th February 2023. The parties further filed written submissions. The court has considered the simple facts set out in the twin applications and the responses thereto and has concluded that the amended application, dated 3/10/2023 was properly served on the applicant,s advocate together with a hearing notice set for 24/10/2023. That an exparte order was properly made by the judge on 24/10/2023 in the absence of the applicant without any explanation.
19. That no reasonable explanation has been made by the claimants' advocate for the failure to appear before court to defend the application on 24/10/2023.
20. That in the present application, no substantive orders have been sought by the applicant and so none can be granted upon hearing and determination of this application.
21. Furthermore, the court is satisfied that there was no reference filed to date against the ruling of the Deputy Registrar delivered on 23/9/2022 on the five (5) files way after the expiry of the 14 days within which a defence is to be made.
22. Accordingly, the applications dated 7th and 8th February 2023 are misconceived and an abuse of the court process. The twin applications lack merit and are dismissed with costs.

DATED AT NAIROBI THIS 18TH DAY OF APRIL, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Litono for advocate for claimant

Mr. Evans Ochieng for advocate for respondent

Mr. Kemboi, Court Assistant

