



Aura v Trans-Nile Enterprises Limited (Employment and Labour Relations Cause 280 of 2019) [2024] KEELRC 2612 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2612 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 280 OF 2019
MN NDUMA, J
OCTOBER 24, 2024**

BETWEEN

JOSEPH AURA CLAIMANT

AND

TRANS-NILE ENTERPRISES LIMITED RESPONDENT

RULING

1. The firm of Mob Law Advocates in application dated 24/4/2024 seeks to replace the firm of Kogai & Co. Advocates in this matter in which the court delivered judgment on 19/10/2023 and the claimant was awarded Kshs. 1,874,838/= plus interest from the date of filing the suit till payment in full and costs.
2. Kogai & Company Advocates filed party/party bill of costs and the same was taxed at Kshs. 442,721/= on 22/2/2024. The decretal sum has continued to increase to Kshs. 3,143,480/= as at 3rd June 2024.
3. Kogai & Company Advocates have since failed to agree with the claimant/client on the fee note payable and the firm of advocates filed an advocate/client bill of costs, in Misc. 126 of 2024 Kogai & Company Advocates versus Joseph Aura. The matter is pending taxation by the Honourable Deputy Registrar.
4. The matter is guided by Order 9 Rule 9 of *Civil Procedure Rules* which provides: -

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such a change or intention to act in person shall not be effected without an order of the court:

- a. Upon an application with notice to all the parties; or
- b. Upon a consent filed between the ongoing advocate and the proposed incoming advocate or party intending to act in person as the case maybe.”



5. In the case of *S. K. Tarwedi versus Veronica Muchmenn* [2019] eKLR the court stated:

“In my view, the essence of order 9 Rule 9 Civil Procedure Rules is to protect advocates from mischievous clients who will wait until a judgment has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away. Indeed order 9 does not foresee how Rule 9 can be sidestepped hence the enacting of Rule 10 as follows.”

Order 9 Rule 10 provides: -

“9

(10) An application under rule 9 may be combined with other prayers provided the question of change of advocate or party intending to act in person shall be determined first.”

6. In the present application, the applicant/advocate did not seek other prayers apart from leave to be granted to the law firm of Mob Law Advocates to come on record for the client in the place of the law firm of Kogai & Company Advocates.
7. Brenda Kogai in the replying affidavit states that there is nothing to be taken over by the proposed new law firm but the application only reflects the mischief of the claimant/client to side step the respondent who has duly performed the duty to represent the claimant/client faithfully and to the very end.
8. That failure to agree on the fee payable to the advocate on record may only be resolved by taxation of advocate/client bill of costs which has already been filed in the matter. That the application is mischievous and an abuse of court process and it be dismissed with costs.
10. The court has carefully considered the deposition by the parties and their submissions and finds the following orders to be appropriate to resolve the matter justly: -
 - a. The firm of Mob Law Advocates is admitted on record for the claimant in place of the law firm of Kogai & Company Advocates for the limited purpose of representing the claimant at the hearing and disposal of advocate/client bill of costs in Misc. 1260 of 2024 Kogai & Company Advocates versus Joseph Aura and no more.
 - b. The firm of Kogai & Company Advocates to remain on record to advance execution of the judgment/decreed of court dated 19/10/2023.
 - c. No order as to costs.

DATED AT NAIROBI THIS 24TH DAY OF OCTOBER 2024

Mathews Nduma

Judge

Appearance:

Mr. Brian Onyango for applicant/advocate

M/s. Kogai for respondent/advocate

Mr. Kemboi – Court Assistant

