



Gunga & Company Advocates v Kwale Water & Sewerage Company Limited (Miscellaneous Application E055 of 2022) [2024] KEELRC 13507 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13507 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E055 OF 2022**

**M MBARŪ, J
DECEMBER 18, 2024**

BETWEEN
GUNGA & COMPANY ADVOCATES APPLICANT
AND
KWALE WATER & SEWERAGE COMPANY LIMITED RESPONDENT

RULING

1. The respondent, Kwale Water & Sewerage Company Limited filed an application dated 15 August 2024 seeking;
 - a. Spent.
 - b. Pending the hearing and determination of the application herein, the court be pleased to stay the execution of the certificate of costs dated 28 March 2024 which was adopted and endorsed as the Decree of the court for purposes of execution on 15 July 2024.
 - c. The court be pleased to mark the certificate of costs dated 28 March 2024 which was adopted and endorsed as the Decree of the court for purposes of execution on 15 July 2024 as having been settled in full.
 - d. Costs of this application be provided for.
2. The application is supported by the affidavit of Eric Parmet, the managing director of the respondent, and because the respondent instructed the applicant to act for them in Mombasa ELRC Cause No.23 of 2020 and who filed a response to the claim. On 1 December 2020, the applicant served the respondent with the fee note for Ksh.292,784, which was settled in two instalments, Ksh.161,384 through cheque No.011130 on 1 December 2020 and Ksh.113,732 through cheque No.011230 dated 23 December 2020.



3. The proprietor of the applicant firm, Hon. Mwinga Gunga Chea, died on 27 December 2020, before the suit could be determined. Following the demise, G. Mutubia of M/s Sherman Nyongesa & Mutubia Advocates took over the administration of the applicant firm.
4. On 4 March 2022, the applicant served the respondent with a summons dated 28 February 2022 seeking to withdraw from acting for them, and the application was allowed on 20 April 2022. The firm filed an Advocate-Client Bill of Costs dated 1 August 2022, which was taxed at ksh.373, 681 and a certificate of costs issued on 28 March 2024.
5. The certificate of costs dated 15 July 2024 was adopted and endorsed as a court decree for execution purposes.
6. Taking into account the earlier payments made on 1st and 22nd December 2020, the balance payable is Ksh.80, 897, which was paid in full through cheque No.409637 on 6 August 2024.
7. The applicants have disputed the earlier payments in settlement of the fee noted and want to ignore them. They have threatened execution, and unless the orders sought are issued, the respondent will suffer loss and damage.
8. In reply, the applicant filed the Replying Affidavit of Godfrey Mutubia Advocate from the Sherman Nyongesa & Mutubia Advocate firm, who said that the respondent instructed the applicant to act for them. On 24 November 2020, the applicant issued a fee note to the respondent to settle professional fees.
9. On 23 March 2021, the applicant wrote to the respondent to pay the fee note, which should have been addressed. The fee note has yet to be settled, and cheque No.011130 dated 4 December 2020 was for fees in Kwale CMCC No.531 of 2018 and Note Kwale ELRC No.23 of 2020.
10. Mutubia advocate aver that the firm represented the respondent in Kwale CMCC No.531 of 2018, and during the process of taxation, the respondent never brought out evidence in support of the allegations that it had settled the bill or fee note in full. On 15 July 2023, the applicant moved the court for a Certificate of Costs converted to a Decree for execution. The instant application is an effort to appeal against the decision of the taxing master contrary to Rule 11(4) of the Advocates Remuneration Order, and the application should be dismissed with costs.
11. The respondent filed a Supplementary Affidavit of Eric Parmet averring that cheque No.011130 dated 1 December 2020 was for the settlement of fee note dated 24 November 2020 in Mombasa ELRC Cause No.23 of 2020, not Kwale CMCC No.531 of 2018, as alleged by the applicant.
12. In Kwale CMCC 531 of 2018, the respondent paid the fee note on 6 March 2019 in full.
13. On 14 June 2024, the parties attended court for the hearing, and the subject application was allowed.
14. Parties filed written submissions, which are analyzed in the findings.
15. The ruling delivered on 14 March 2024 related to the Advocate-Client Bill of Costs dated 1 August 2022 for Cause No.E023 of 2020. The Bill of Costs was filed after the applicant ceased to act for the respondent in the matter.

The costs were taxed at ksh.373, 681.

The respondent asserts that they have settled the costs in full;

On 1 December 2020, they paid Ksh.161, 384 through cheque No.011130;

On 22 December 2020, they paid ksh.113, 732; and



On 6 August 2024, they paid ksh.80, 897.

16. The applicant has urged the court that the payment through cheque No.011130 on 4 December 2020 related to a different matter, Kwale CMCC No.531 of 2018, and not Kwale ELRC No.23 of 2020, and that the bill has not been paid in full.
17. The subject Bill of Costs addressed by the Taxing Master on 14 March 2024 related to Kwale ELRC No.23 of 2020.
18. Under Kwale ELRC No.23 of 2020, there is evidence of payments in three instalments, as outlined above. The last payment of Ksh.80, 897 was paid after the taxation process, the previous two instalments having been paid way back in December 2020.
19. As outlined in the Affidavit of Parmet, they were being represented by the applicant, but the proprietor is deceased, and different advocates have taken over the matter. The firm of Sherman Nyongesa & Mutubia Advocate took over and applied to cease acting. The application was allowed, and the Bill of Costs was filed.
20. In his Replying Affidavit, Mutubia advocate averred that the Fee Note partially paid through Cheque No.11130 dated 4 December 2020 was for Kwale CMCC 531 of 2018 and not Kwale ELRC No.23 of 2018. There is no evidence to support such averments.
21. Indeed, the firm of Sherman Nyongesa & Mutubia Advocate took over from the applicant proceedings in Kwale CMCC 531 of 2018, but this is not apparent from the record. In the Replying Affidavit of Mutubia Advocate dated 26 August 2024, he attached “GM-2”, a demand note by the applicant dated 23 March [date unclear], and this relates to a fee note dated 24 November 2020 concerning Kwale ELRC No.23 of 2020.
22. Evidence shows that the Bill of Costs is fully settled for this matter under Kwale ELRC No. 23 of 2020.
23. The application dated 15 August 2024 is meritorious and is hereby allowed. The Certificate of Costs dated 28 March 2024 is fully settled. Costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

