



Muthoni & Karanja Advocates v Nairobi City County Assembly (Miscellaneous Application E114 of 2022) [2023] KEELRC 2545 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2545 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E114 OF 2022
MN NDUMA, J
OCTOBER 12, 2023
IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 OF THE LAWS OF KENYA
AND
IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER, 2014
AND
IN THE MATTER OF TAXATION OF BILL OF COSTS
BETWEEN
MUTHONI & KARANJA ADVOCATES PETITIONER
AND
NAIROBI CITY COUNTY ASSEMBLY RESPONDENT
RULING

1. The applicant in the notice of motion application dated 9/2/2023 seeks an order in the following terms:-
 1. Spent.
 2. The Honourable Court be pleased to set aside the orders issued on 25th January, 2023 dismissing the application dated 11th August, 2022 for non-attendance.
 3. This Honourable Court be pleased to reinstate and revive the application dated 11th August, 2022 and all other interlocutory orders issued therein be further reinstated.
 4. The Honourable Court be pleased to stay the Taxing Officer's order issued on 17th December, 2021 in respect of the Advocate's/Applicant's Bill of Costs dated 25th May, 2021 and any other order emanating from the dismissal order issued on 25th January, 2023.



2. The application is premised on grounds 1 to 11 set out on the face of the application and buttressed in the supporting affidavit of Ochieng A. Ogago Advocate, which grounds may be summarized that the matter came up for mention on 25th January, 2023 to confirm the filing of submissions in respect of the application dated 11th August, 2023. That the advocate in conduct of the matter was well aware of the mention date and had logged in the Microsoft Teams platform and was awaiting the lobby to be joined in the call.
3. That the advocate was never allowed in the virtual call hence inadvertently missed out to attend to the matter which was consequently dismissed for non-attendance.
4. That the advocate was in full compliance with the directions of the Court and had filed and served written submissions on 24th January, 2023.
5. That the Court should have considered the submissions duly filed.
6. That the matter be reinstated and application dated 11th August, 2022 be revived.

Replying Affidavit

7. The Court has been unable to find any replying affidavit by the respondent.
8. The Court is satisfied that the advocate in conduct of the matter was for reasons beyond their control unable to participate in the virtual Court proceedings on 25th January, 2023 though the advocate had logged in the Microsoft Teams platform.
9. Accordingly, the Court finds that it is in the interest of justice and fair play that it exercises its discretion to set aside the orders issued on 25th January, 2023 dismissing the application dated August 11, 2022 for non-attendance.
10. In the final analysis, the application dated August 11, 2022 is reinstated together with all other interlocutory orders issued in respect of the said application pending *inter-partes* hearing and determination of the same.
11. Parties to take directions on the determination of the application dated August 11, 2022 accordingly.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 12TH DAY OF OCTOBER, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance:

Mr. Ogeta for claimant

Mr. Mwangi Advocate for Applicant/Respondent

Ekale: Court Assistant

