



**Kenya Hotels & Allied Workers Union v Oak Place Hotel; Akolo  
Wanyanga & Co Advocates (Intended Interested Party) (Cause  
394 of 2018) [2023] KEELRC 3251 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3251 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 394 OF 2018  
L NDOLO, J  
DECEMBER 7, 2023**

**BETWEEN**

**KENYA HOTELS & ALLIED WORKERS UNION ..... CLAIMANT**

**AND**

**OAK PLACE HOTEL ..... RESPONDENT**

**AND**

**AKOLO WANYANGA & CO ADVOCATES .. INTENDED INTERESTED PARTY**

**RULING**

1. By its Notice of Motion dated 3<sup>rd</sup> October 2023, the Claimant seeks the following orders:
  - a. Joinder of the Intended Interested Party, Akolo Wanyanga & Co Advocates in these proceedings;
  - b. Stay of taxation of the Bill of Costs dated 22<sup>nd</sup> February 2021 filed by the Intended Interested Party;
  - c. An order striking out the Intended Party's Bill of Costs dated 22<sup>nd</sup> February 2021.
2. The application is supported by an affidavit sworn by the Claimant's Secretary General, Wycliffe Sava Mundu and is premised on the following grounds:
  - a. That on 5<sup>th</sup> February 2021, Makau J entered judgment in favour of Claimant as against the Respondent, in the sum of Kshs. 1,613,500;
  - b. That at the institution of the suit, the Claimant had authorised John Simiyu, the then 2<sup>nd</sup> Deputy Secretary General of the Claimant, to litigate this matter, among many others, in court on behalf of the Union;



- c. That on 29<sup>th</sup> June 2021, the Claimant carried out elections for various positions, in which John Simiyu lost the position of 2<sup>nd</sup> Deputy Secretary General;
  - d. That aggrieved by the loss, John Simiyu caused the file in this matter, among others, to disappear and thereafter unprocedurally issued instructions to MS Akolo Wanyanga & Company Advocates;
  - e. That by an application dated 18<sup>th</sup> July 2022, the Proposed Interested Party moved the Court seeking leave to come on record for the Grievants, in place of the Claimant and further that the Grievants be made parties to the claim or in the alternative that the Claimant be replaced by the Grievants in the record;
  - f. That on 31<sup>st</sup> May 2023, the Court determined that it had fully rendered itself in this matter and was therefore *functus officio*;
  - g. That while in the process of applying for execution of the judgment delivered on 5<sup>th</sup> February 2021, the Claimant has come to learn that the Intended Interested Party has filed a Party and Party Bill of Costs dated 22<sup>nd</sup> February 2021, which has been set down for taxation;
  - h. That item No 1 in the Bill of Costs makes reference to instructions received on 16<sup>th</sup> May 2019, to the Intended Interested Party to act for the Claimant in a claim of wrongful dismissal of the Claimant's members;
  - i. That the Claimant has never issued instructions and/or retained the Intended Interested Party, through a resolution, to act on its behalf in this matter;
  - j. That any instructions purportedly obtained by the Intended Interested Party were obtained fraudulently and are unknown to the Claimant;
  - k. That the Claimant is a stranger to the Bill of Costs filed by the Intended Interested Party, who acted without instructions;
  - l. That Advocate fees are only payable upon express instructions from a client, which instructions ought to be given freely, and that receipt of instructions based on fraud and/or misrepresentation amounts to no instructions or invalid instructions;
  - m. That an Advocate can only act in a matter, where they have been instructed either expressly or by implication;
  - n. That jurisdiction is conferred upon the Taxing Officer, in settling the question as to whether an Advocate-Client relationship exists and that in the absence of such a relationship, the Taxing Officer would be bereft of jurisdiction to tax a Bill;
  - o. That the Respondent will not suffer any prejudice if the orders sought are granted.
3. A replying affidavit was sworn by Tecla Musimbi Mativa on 17<sup>th</sup> November 2023. Mativa, who describes himself as one of the Grievants, depones that on 31<sup>st</sup> May 2023, when the application dated 28<sup>th</sup> April 2023, the Court declared that it was *functus officio*.
  4. Mativa claims to be aware that the firm of Akolo Wanyanga & Company Advocates was duly instructed to handle the case on behalf of the Union.
  5. He states that under Rule 3.7 Article X(f) of the Union Constitution, the second Deputy Secretary General (Legal) has the authority to assist the Secretary General in all legal matters/functions, including instructing Legal Counsel.



6. Mativa further states that the firm of Akolo Wanyanga & Company Advocates was handed the file before the Union elections. He adds that he and his colleagues thereafter resigned from the Union and therefore have the right to choose their representative.
7. By an *ex tempore* ruling delivered on 31<sup>st</sup> May 2023, I made a finding that the Court having delivered judgment in this matter, had fully rendered itself, and was therefore *functus officio*.
8. With this in view, my ruling on this application is straightforward and it is this; first, that by seeking orders for joinder of a third party, the Claimant is in effect seeking to re-open a matter that is closed; second, that the replying affidavit sworn by Tecla Musimbi Mativa, who was not a party in the proceedings before the Court is irregular and incompetent.
9. As to whether the firm of Akolo Wanyanga & Company Advocates was duly instructed to act for the Claimant in this matter, the only thing to say is that this is an ancillary dispute to be handled as such.
10. In the result, the Claimant's application dated 3<sup>rd</sup> October 2023 is declined.
11. Each party will bear their own costs.
12. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF DECEMBER 2023**

**LINNET NDOLO**

**JUDGE**

*Appearance:*

*Mr. Ombati for the Claimant*

*Mr. Mugo for the Respondent*

*Ms. Wanyama b/b for Mr. Wanyanga for the Intended Third Party*

