



**Owiti, Otieno, Ragot Advocates v Board of Directors Lake Victoria
South Water Services Board (Miscellaneous Civil Cause E038 of 2022)
[2022] KEELRC 13228 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13228 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CIVIL CAUSE E038 OF 2022
S RADIDO, J
NOVEMBER 16, 2022
IN THE MATTER OF THE ADVOCATES ACT, CHAPTER 16 LAWS OF KENYA
AND
IN THE MATTER OF AN APPLICATION
BETWEEN
OWITI, OTIENO, RAGOT ADVOCATES APPLICANT
AND
BOARD OF DIRECTORS LAKE VICTORIA SOUTH WATER SERVICES
BOARD RESPONDENT

RULING

1. For determination is a motion dated July 25, 2022 by the advocate/applicant seeking orders:
 - (1) That the undertaking/bond of payment of professional fees entered into by the parties herein on the December 9, 2019 in respect of professional services rendered by the applicant for the respondent in the original Kisumu ELRC Cause No 30 of 2016, *Eng Moses Agumba Orot v the Chairman, Board of Directors, Lake Victoria South Water Services Board and Cabinet Secretary, Ministry of Water & Irrigation* for the sum of Kshs 5,800,000 (Kenya shillings five million eight hundred thousand only) be adopted as a certificate of costs.
 - (2) That the said certificate of costs be issued in the sum of Kshs 1,678,586.00 (Kenya shillings one million six hundred and seventy-eight thousand, five hundred and eighty-six only) being the balance of the advocate/applicant's unpaid professional fees outstanding pursuant to the said agreement.



- (3) That upon the grant of prayers 1 and 2 above, the certificate of costs be deemed as judgment and decree of this honourable court, together with interest thereon at 14% per annum in accordance with rule 7 of the [Advocates Remuneration Order](#) from May 12, 2020, being the date of the last payment made till payment in full.
- (4) That the costs of this application be borne by the respondent.
2. The reasons advanced by the applicant in support of the motion were that the respondent had retained his services to represent it in the cause hereinabove, that an agreement had been reached on the amount of fees to be paid, and that only a portion of the fees had been paid.
3. The respondent filed a replying affidavit in opposition to the motion on September 9, 2022.
4. In the affidavit, it was deponed that there was no valid retainer between the parties because the instructions to act were purportedly made with the chairperson of the respondent and not the Chief Executive Officer, the procurement of the applicant's services did not comply with the [Public Procurement and Asset Disposal Act](#), there was no agreement reached on fees payable, the applicant had used the wrong schedule to compute his fees and that the fees charged were exorbitant.
5. The applicant's submissions were not on record (they should have been filed and served before October 7, 2022). The respondents filed their submissions on October 31, 2022.
6. The court has considered the motion, affidavits, and submissions.
7. It is not in dispute that the applicant represented and defended the respondent successfully in Kisumu Cause No 30 of 2016, [Eng Moses Agumba Orot v Chair, Board of Directors, Lake Victoria South Water Services Board & ar.](#)
8. However, in dispute is whether the applicant was lawfully instructed such that he can succeed in a claim for fees.
9. The parties had filed correspondences suggesting that the applicant was instructed one way or the other to defend the respondent and that part payment of the fees was made before concerns were raised.
10. The respondent then informed the applicant through an email of May 4, 2020 that the balances would be paid after reconciliation.
11. The correspondence further suggests that an agreement was reached.
12. Despite the correspondence and in view of the fact that the applicant has not exhibited a retainer agreement, the court is of the view that the proper course is for the applicant to utilise the provisions of section 48 of the [Advocates Act](#) to pursue any outstanding fees or costs from the respondents.

Conclusion and Orders

13. Flowing from the above, the court declines to grant the orders sought in the motion dated July 25, 2022.
14. The applicant did not file submissions within the agreed timelines. Costs in the cause.

DELIVERED VIRTUALLY FROM LAMU, DATED, AND SIGNED ON THIS 16TH DAY OF NOVEMBER 2022.

RADIDO STEPHEN, MCIArb

JUDGE



Appearances

For applicant Owiti, Otieno & Ragot Advocates

For Respondent Pamphil Matsekhe Oundo Esq, Advocate

Court Assistant Chrispo Aura

