



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 274 OF 2014

FRANCIS OCHIENG ABILA & 24 OTHERS.....CLAIMANT

VS

CAREER DIRECTIONS LIMITED.....RESPONDENT

RULING

1. This ruling flows from an application brought by Notice of Motion dated 25th February 2020 in which the law firm of Angeline Adhiambo & Associates seeks the following orders:

- a) An order for security for costs to the tune of Kshs. 117,160, being Advocate/Client costs, pending taxation of the Bill of Costs filed herein;
- b) A temporary stay of proceedings herein due to issues of representation and payment of costs;
- c) A stay of payment in respect of compensation for unlawful termination and other terminal dues to the Claimants until the Advocate/Client Bill of Costs has been taxed.

2. The application is supported by the affidavit of Angeline Adhiambo Omollo, Advocate and is based on the following grounds:

- a) That the Applicant, Ms. Angeline Omollo has been in conduct of this matter representing the Claimants and the Applicant shall suffer irreparable loss if the matter is allowed to proceed before this application has been determined;
- b) That on 3rd February 2020 when the matter came up in court for mention, Ms. Angeline Omollo learnt that a Notice of Change of Advocates had been filed by the firm of Onyango Onunga & Co Advocates on 28th January 2020, which notice had not been served on Ms. Angeline Omollo's office;
- c) That the said Advocates, Onyango Onunga & Co Advocates have been trying to take over the matter, yet Ms. Angeline Omollo has not been paid her costs by the Claimants;
- d) That if the said Advocates are allowed to proceed with the matter before Ms. Angeline Omollo has been paid her costs, she will be greatly prejudiced.

3. The Claimants' response to the application is contained in replying affidavit sworn by the 1st Claimant, Francis Ochieng Abila on 2nd March 2020. Abila states that he does not remember giving instructions to M/S Angeline Omollo & Associates to file any pleadings on behalf of the Claimants.

4. Abila depones that sometime in the year 2015, he instructed the firm of Omollo Onyango and Company Advocates, which at the time was a partnership between Miss Angeline Omollo and Miss Jane Akinyi Onyango, to take over his matter being **Employment Claim No 274 of 2014** from M/S Kilonzo & Aziz Advocates.

5. Abila further depones that on 14th September 2019, the partnership between Miss Angeline Omollo and Miss Jane Akinyi Onyango was dissolved and the files divided between the partners after a long standing dispute over distribution of the files.

6. Abila adds that because he had personally handed over his file to Miss Jane Akinyi Onyango he instructed her to take over the matter under the new law firm and to proceed with it to conclusion.

7. Based on Abila's instructions, Miss Jane Akinyi Onyango trading as Onyango Onunga Advocates filed a Notice of Change of Advocates

on 28th January 2020, which notice was served on Miss Obobo, an Associate at M/S Angeline Omollo and Associates, on 3rd February 2020.

8. Abila states that he has been informed by his Advocates on record, M/S Onyango Onunga Advocates that the issue of taking over files previously handled under Omollo Onyango and Company Advocates is a matter that was subjected to mediation and M/S Angeline Omollo and Associates had taken over files from M/S Onyango Onunga Advocates without the latter Advocates asking for costs.

9. Abila refers to letter dated 15th November 2019 from M/S Angeline Omollo and Associates, with respect to **Mombasa ELRC Cause No 214 of 2015: Joseph Sifa Kaingu v Jihan Freighters**, stating inter alia:

a) *During mediation, it was agreed that upon distribution of files, it would only be the Client(s) to determine afterwards, who would represent them going forward;*

b)

c) *Alternatively, any Client can exercise his right to represent himself and file a notice to act in person*

10. Abila further refers to letter dated 24th February 2020 in relation to **Kilifi Employment Cause No 1 of 2019: Gibson Momanyi v Mombasa Apparel (EPZ)** in which M/S Angeline Omollo and Associates invoked clause (a) above.

11. Abila states that it had been agreed that matters pending judgment be finalised under Omollo Onyango and Company Advocates. However, in **Kilifi CMCC No 41 of 2017: Martin Maghanga v Umoja Rubber Limited** where judgment was entered in favour of the Claimant on 9th October 2019, the settlement cheque was drawn in the name of Angeline Omollo and Associates.

12. Having scrutinised the pleadings filed by the parties in this application and having heard oral submissions by Counsel, it is apparent that the real dispute presented in this application has to do with the terms of dissolution of the partnership between Miss Angeline Omollo, Advocate and Miss Jane Akinyi Onyango, Advocate.

13. Any dispute arising from dissolution of a partnership between Advocates is beyond the specialised jurisdiction of this Court. Further, a dispute between an Advocate and their client with regard to fees would be cured by an Advocate/Client Bill of Costs to be taxed before a Taxing Master.

14. At any rate, the Bill of Costs attached to this application, which apparently informs the figure of Kshs. 117,160 sought as security for costs, assumes that Miss Angeline Omollo, Advocate rendered full professional services to the Claimant up to conclusion of the matter. The court record does not confirm this proposition.

15. For the foregoing reasons, I find the present application to be without merit and proceed to dismiss it with costs to the Claimant.

16. It is so ordered.

DATED SIGNED AND DELIVERED AT MACHAKOS THIS 9TH DAY OF APRIL 2020

LINNET NDOLO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the

COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties electronically, with their consent. The parties have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules which requires that all judgments and rulings be pronounced in open court. In permitting this course, the Court is guided by Article 159(2)(d) of the Constitution of Kenya which commands the Court to render substantive justice without undue regard to technicalities, Article 40 of the Constitution which guarantees access to justice, and Section 18 of the Civil Procedure Act which imposes a duty to employ suitable technology to facilitate just, expeditious, proportionate and affordable resolution of civil disputes. Further, in view of the ensuing disruption of the court diary, this ruling has been delivered during the court recess.

LINNET NDOLO

JUDGE

Appearance:

Miss Obobo for the Applicant

Miss Onyango for the Claimant