



In re Estate of Mehboob Khurshid Alam (Deceased) (Succession Cause E391 of 2022) [2024] KEHC 2021 (KLR) (Family) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E391 OF 2022
HK CHEMITEI, J
FEBRUARY 29, 2024**

BETWEEN

ASHIRUMA & CO. ADVOCATES APPLICANT

AND

ADIL MANZOOR KHAN 1ST RESPONDENT

ISHI KHAN & CO. ADVOCATES 2ND RESPONDENT

RULING

1. This ruling relates to the application dated 25th May, 2023 filed by the Applicant, Ashiruma & Co. Advocates seeking for Orders That:
 - a. Spent.
 - b. The notice of change of advocates dated and filed on 18th April, 2023 by the 2nd Respondent and on behalf of the 1st Respondent be and is hereby expunged from the court record as it offends the provisions of Order 9 Rule 9 (a) and (b) of the Civil Procedure Rules, 2010.
 - c. Costs of this application be provided for.
2. The application is opposed by the respondents vide replying affidavits sworn on 7th June, 2023 by the 1st and 2nd Respondents.
3. The parties have filed written submissions dated 25th September, 2023 and 26th September, 2023 respectively.



Background

4. The 1st Respondent is an objector in the succession cause and had instructed the Applicant to act for him in the objection proceedings.
5. All the parties agree that the Applicant successfully executed his duties to the 1st Respondent until the point where a mediation settlement agreement dated 24th February, 2023 was signed by all the parties i.e. Adil Manzoor Khan, Javaid Alam, Fakhar Alam, Archer & Willock Advocates, Ashiruma & Co. Advocates and Lucky J. Juma.
6. All parties agree that the mediation settlement agreement was adopted by this court and what is/ was pending is/ was extraction of the grant of letters of administration intestate and the certificate of confirmation of grant after the statutory 6 months. There is on record a certificate of confirmation grant issued on 6th July, 2023 and was due for confirmation on 4th December, 2023. The certificate of confirmation of grant is yet to be issued.
7. Applicant's case is that the 2nd Respondent is not properly on record and offends the provisions of order 9 (a) and (b) of the *Civil Procedure Rules*, 2010.
8. The 1st and 2nd Respondents' case is that the Applicant is opposed to the 2nd Respondent coming on record for the 1st Respondent because of a disagreement on outstanding legal fees payable to the Applicant by the 1st Respondent. They are also of the position that the matter is still ongoing and judgment has not been entered and further that issues of legal fees should not be a bar to litigants' legal representation by advocates of their choice. The 1st Respondent avers that the Applicant sent an interim fee note of Kshs. 249, 400/= that they negotiated down to Kshs. 100, 000/= and further that there was no agreement on final fees for the matter.
9. There is on record:
 - a. An interim fee note dated 14th July, 2022 which indicates inter alia a deposit on instruction fees.
 - b. An unsigned and undated retainer agreement indicating at paragraph 3.3, "...the amounts to be paid to the firm for the benefit of the client from the Estate of Mehboob Khurshid Alam- shall be remitted to the Client but less 15% being the agreed legal fees payable to the firm..."

Analysis and Determination:

10. I have carefully considered the application, the responses as well as the written submissions filed by the parties and the issues for determination, as crafted by the 1st and 2nd Respondent, are as follows:
 - a. The right of a litigant to appoint an advocate of their choice.
 - b. Whether the notice of change of advocates was properly filed by the 2nd Respondent.
11. At paragraph 52 of *Corporate Insurance Company Ltd v Advocates* (Miscellaneous Application 033 of 2020) [2022] KEHC 545 (KLR) (7 June 2022) (Ruling) Judge G. V. Odunga stated, "... The issue of validity of agreements between advocates and clients with respect to remuneration was dealt with by Ochieng J. in *Abmednassir Abdikadir & Co. Advocates v National Bank of Kenya Limited (2)* [2006] 1 EA 5 in which the learned Judge held that reading of section 45 (1) of the *Advocates Act* reveals that the agreements were in writing and signed by the client or his agent duly authorised in that behalf. The



same was the position adopted by this court in *Peris Pesi Tobiko, Independent Electoral and Boundary Commission & Returning Officer Kajiado east Constituency* [2017] where it was held as follows:

“The question is whether the use of the phrase “our final fee note is likely to be” amounts to unequivocal statement of the exact fee that the Client is bound to pay. To constitute a valid and binding agreement for the purposes of section 45 of the *Advocates Act*, it is expressly provided that the same must be in writing and signed by the client or his agent duly authorized in that behalf. In this case both the two letters are not signed by the Client. Whereas an agreement may be formed by a series of correspondences, the Client has not exhibited any document by which he signaled his acceptance of the proposed fees by the Advocate. In my view for a document to be said to constitute a valid and binding agreement for the purposes of section 45 of the *Advocates Act*, the same must not only be unequivocal that it signifies what the precise final amount is but must be signed by the person to be charged who in this case is the Client. This was the position adopted by Tanui, J in *Rajni L Somaia v Cannon Assurance (K) Ltd Kisumu HCMA No 289 of 2003....* There being no validly binding agreement as contemplated by the law, the Advocate was perfectly entitled to file his bill for taxation. [Emphasis mine].”

Determination

12. I find that the adopted mediation settlement agreement dated 24th February, 2023 is a judgment of this court and what is pending is its implementation which is already underway because a grant of letters of administration intestate has already been issued and it was scheduled for confirmation on 4th December, 2023.
13. The change of counsels on record in my view and as intimated in the aforecited authorities does not in any way prejudice any of the parties or at all. In other words, it cannot be a bar to this matter proceeding to its logical conclusion.
14. There being no signed retainer agreement between the Applicant and the 1st Respondent, the applicant could proceed to raise his fee note against his erstwhile client in the appropriate legal manner for the services rendered.
15. The applicant is otherwise disallowed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024.

H K CHEMITEI

JUDGE

