



**Musyoki Mogaka & Co Advocates v Githegi (Miscellaneous Application
479 of 2023) [2024] KEHC 1777 (KLR) (Civ) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS APPLICATION 479 OF 2023

JN MULWA, J

FEBRUARY 22, 2024

BETWEEN

MUSYOKI MOGAKA & CO ADVOCATES ADVOCATE

AND

MARY NJAMBI GITHEGI CLIENT

RULING

In the Notice of Motion dated 28/08/2023.

1. There is an Advocate-client Bill of Costs dated 3/07/2023 filed by the firm of Musyoki Mogaka & Co. Advocates against the client Mary Njambi Githeri arising from High Court Civil Appeal No. 59 of 2019 Mary Njambi Githeri vs. Christine Wambui Mwaura. It is yet to be taxed.
2. The client/Applicant Mary Jambji Githegi by an Application dated 28/08/2023 has approached this court seeking an order that the said Advocate-Client Bill of Costs dated 3/07/2023 against her, lodged by the firm of Musyoki Mogaka & Co. Advocates are struck out with costs.
3. In support, she filed an affidavit sworn on 28/08/2023, stating that there exists no advocate-client relationship in respect of Hcca. No. 59 of 2019; and has annexed several correspondences therein to support her averments.
4. The parties agreed to rely on their affidavits and pleadings in prosecution of the application before me on 26/10/2023. The respondent advocates were granted an opportunity to file their responses but as at 16/02/2024 the Respondent has not filed any response. The said application dated 28/08/2023 therefore stands unchallenged.



5. The impugned Advocate Client Bill of Costs dated 3/07/2023 is in respect of High Court Civil Appeal No. 59 of 2019 wherein the Applicant states to have been represented by the firm of Nyachiro & Co. Advocates and not Musyoka Mogaka & Co. Advocates.

She depones that before instructing Nyachiro & Co. Advocates, she had approached Musyoka Mogaka & Co. Advocates to act for her but by letter dated 29/08/2020 the instructions were declined.

6. Additionally, the client further depones that she had paid a deposit of Kshs. 300,000/= to the said law firm, and in particular to MR. Dustan Omari Advocate which sum has been refunded upon declining to act for her in the appeal captioned herein.
7. Further the client depones that she filed a complaint for the non-refund of the sum of Kshs. 300,000/- against the law firm, Musyoka Mugaka & co. Advocates vide Disciplinary Tribunal Case no. 10 of 2023 wherein Advocate Dustan Omari was to take plea on 24/06/2023.
8. Documents annexed to the Applicants/Client supporting affidavit show that indeed by letter dated 26/08/2020, the law firm Musyoki Mugaka Advocates addressed to Mary Njambi Githegi, states at Paragraph 2 that:

“It is unfortunate that we have encountered difficulties in drawing and filing the required documents to ensure you receive the so sort justice. Therefore we are feeling constrained to properly represent you in this matter. We are therefore left with no option but to surrender your original file to you so that you can seek redress elsewhere.....”

9. By a letter dated 15/09/2020 the applicant wrote a letter to Musyoki Mogaka & Co. Advocate requesting for refund of monies paid as instruction fees in the sum of Kshs. 300,00/=.

The above events lead to the complaint to the Advocates complaints commission.

The outcome of the complaint has not been disclosed to this court nor is it before the court.

10. There is no doubt that the advocates having declined the instructions by the client, and returned the file and documents to the client without any work undertaken as clearly stated at the captioned paragraph 2 of the letter dated 26/08/2020, the Client-Advocate relationship was terminated; and thereafter, the deposit made by the client recalled as no legal work, was undertaken pursuant to the instructions given.
11. Having analyzed the applicant/Client’s case and exhibits, I come to the unreliable conclusion that the application dated 28/08/2023 is merited and therefore allowed.

The Advocate-client Bill of Costs dated 3/07/2023 is hereby struck out with costs to the client, Mary Njabi Githenji.

Orders Accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024.

J. N. MULWA

JUDGE

