



**Ms Advocates LLP (Formerly Triple A Law LLP) v China Wu Yi (Kenya) Company Limited
(Miscellaneous Application E222 of 2022) [2023] KEELC 655 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 655 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E222 OF 2022
JA MOGENI, J
FEBRUARY 14, 2023
IN THE MATTER OF THE ADVOCATES ACT CA[16 LAWS OF KENYA
IN THE MATTER OF THE ADVOCATE-CLIENT BILL OF COST ON SERVICES
RENDERED IN RELATION TO THE SALE OF APARTMENTS WITHIN WU YI PLAZA
ERECTED ON LR NO. 2/120 ALONG GALANA ROAD, NAIROBI**

**BETWEEN
MS ADVOCATES LLP (FORMERLY TRIPLE A LAW LLP) ADVOCATE
AND
CHINA WU YI (KENYA) COMPANY LIMITED CLIENT**

RULING

1. Before the court is a chamber summons application dated 13/09/2022 and it is taken out under section 45 (5) of the Advocates Act cap 16 laws of Kenya, order 51 of the Civil Procedure Rules, 2010 and section 3A of the Civil Procedure Act, cap 21 laws of Kenya
2. The application is seeking for the following orders: -
 - i. This honorable court be pleased to set aside the agreement for legal services entered into between the advocate/ applicant and the client/respondent on the September 17, 2016
 - ii. This court be pleased to allow the advocate/applicant to have their costs taxed by the registrar/ taxing master for the non-contentious services duly rendered by the advocate applicant for he part of the business performed before the client changed advocates notwithstanding the agreement.
 - iii. Costs of this application be provided for.



3. The application is based on the grounds stated on the face thereof and is supported by the affidavit of neddie eve akello described as the managing partner of the applicant advocates sworn on September 13, 2022.
4. The application is opposed. There is a replying affidavit sworn on behalf of the respondent by Zhang Hua, an administrator of the client/respondent dated November 14, 2022.
5. Briefly, the applicant and the client entered into an agreement for legal services on September 17, 2016 for sale of apartments in Wu Yi Plaza along Galan Road. The advocates/applicant were to get 1% of the purchase price of each apartment depending of the value of each apartment as their remuneration. The advocate/applicant went ahead went ahead to draft sale agreements and expended their resources to attend meetings on behalf of the client using their resources after being instructed by the client vendor on occasions.
6. It is the applicant's case that the sales of the apartments have never been completed because they would be botched or stopped at the eleventh hour by the client but after all legal services had been rendered and enjoyed by the time of stoppage of the sale of any of the units.
7. The advocate notes that the client wants to keep the advocate in servitude without paying their legal fees for work done and the client has even proceeded and changed their advocates in the matter leaving the applicant unpaid.
8. It is the applicant's case they are apprehensive that their legal services will remain unpaid despite the efforts made by the advocate to provide services to the client.
9. It is the applicant's case that the legal services have been provided to the client and that the advocate has attempted to recover their costs incidental to the incomplete sales in futility.
10. In opposing the application, it is the respondent's contention that in the agreement dated September 17, 2022 it was to facilitate the advocate to secure instructions to act in respective sales of the individual apartments where legal fees would be paid by the individual purchasers. The respondent attached a copies of sale of an apartments marked as ZJ-2A and ZJ-2B to Loshem africa limited for an agreement dated February 20, 2017 where the advocate charged legal fees and all costs and fees incidental to the facilitation of the sale.
11. The respondent contends that the advocate should be stopped from invalidating the agreement having benefited from the agreement after being paid for the instructions.
12. It is the respondent's case that the advocate's role in the agreement is facilitative where payment is based on successive sales of the apartments. It is the respondent's argument that the advocate had not laid before the court any evidence to show that the agreement for legal services was an agreement for payment of legal services. That that advocate's interpretation of the agreement is therefore skewed.
13. It is the respondent's case that if there are any legal fees and or incidental costs/ disbursements pending then the same should be taxed against a defaulting purchases and not the respondent because there is a separate agreement for fees in each sale agreement.
14. The respondent contended that for there to be an agreement on fees, there has to be a written agreement which is clear and unequivocal. According to the respondent, no such agreement exists in this case. It is further the respondent's case that the agreement between itself and the applicant is proper and can only be varied or set aside with an agreement of both parties and not on the interference of the court. That the instant application is an abuse of the court system and should be dismissed.



15. The applicant filed its submissions as well as the respondent.

Analysis and Determination

16. I have considered the chronology of events, studied the agreement between the parties and familiarized myself with the provisions of section 45(5) of cap 16, section 3 a of cap 21 and order 51 of the CPR.

17. I find that in the absence of the parties having shared what they consider to be the outstanding issues I have come up with what I believe are the issues to be determined in order to address the issue (s) at hand and these are as follows:-

- a. Whether there was an agreement for fees between the applicant and the respondent;
- b. Whether the taxing master has the jurisdiction to tax the bill of costs for the non-contentious services duly rendered by the advocate.

18. With regard to the first issue, it is the applicant's contention that there was an agreement for fees. The applicant relies on the agreement for legal services which is dated September 17, 2016 a copy was attached marked as NEA 1 where one of the terms of the agreement was that the remuneration for the advocates applicant would be 1% of the purchase price of each of the apartments valued at different amounts respectively but that the payment would be exclusive all disbursements incurred in the court of the work as well as other incidental expenses.

19. The advocate/applicant asks this court to find that there was a binding agreement on fees in view of the provisions of section 45(5) of the Advocates Act which reads: -

45. Agreements with respect to remuneration

1. ...
2.
3.
4.

5. If, after an advocate has performed part only of the business to which any agreement made by virtue of this section relates, such advocate dies or becomes incapable of acting, or the client changes his advocate as, notwithstanding the agreement, he shall be entitled to do, any party, or the legal personal representatives of any party, to such agreement may apply by chamber summons to the court to have the agreement set aside or varied, and every such application shall be dealt with in accordance with subsection (2):

Provided that, in the case of a client changing his advocate, the court shall have regard to the circumstances in which the change has taken place and, unless of opinion that there has been default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing his advocate, shall allow the advocate the full amount of the remuneration agreed to be paid to him.

20. In my view, the said provision in the said agreement and in particular the above quoted part amounts to an agreement on fees between the applicant and the respondent and is therefore in compliance with the section 45 (5) of the Advocates Act. The respondent does not dispute that the advocate indeed undertook the tasks that the advocate signed to do under the legal agreement.



21. It is however the respondent's contention that the said fee was predicated on the purchasers buying the apartments and paying the legal fees to the Advocate. The respondent has not addressed the issues raised by the advocate touching on clause 9.2 which clearly excludes the legal fees from other incidental expenses. In any case, if clause 9.2 is what was agreed upon and that was the position, this court is of the view that it is the responsibility of the advocate to do provide legal services which are diverse in nature as is the case in the instant suit in representing a client and the client is obligated to pay for incidental costs to the legal services provided.
22. I have perused and understood the contents of the application, submissions and the decisions referred to by the parties.
23. It is important that I delve a bit into the issue of the contract in this matter. The respondent in his pleading stated that the contract can only be varied or set aside with an agreement of both parties and therefore the court had no right interfering and he also denied failing to pay for legal services.
24. Both the respondent and the applicant adduced the contract as part of the documents attached to their pleadings. I have looked at the contract as produced.
25. The contract at clause 11.5 states that upon termination of the contract the client will pay the advocate for all services rendered and all fees and costs incurred.
26. The failure to pay the advocate is the basis of the suit where the applicant is seeking to have the agreement for legal services set aside.
27. It is a longstanding principle of law that parties to a contract are bound by the terms and conditions thereof and that it is not the business of the courts to rewrite such contracts. In *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd* (2002) 2 EA 503, (2011) eKLR the Court of Appeal at page 507 stated as follows: -

“A court of law cannot rewrite a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved “.
28. In *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* (2017) eKLR the Court of Appeal further stated that: -

“We are alive to the hallowed legal maxim that it is not the business of courts to rewrite contracts between parties, they are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved”.
29. Given the foregoing I am not persuaded that I should set aside the agreement for legal services that the parties entered into dated September 17, 2016 because the parties voluntarily agreed to be bound by the terms therein. Further the terms have spelt out clearly what each party is entitled to. I am however persuaded that in light of the failure of the advocate being paid incidental, service and disbursement costs, he may seek to have the same taxed.
30. In conclusion, the applicant's chamber summons dated September 17, 2022 succeeds in part in terms of prayers (2) and (3).

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF FEBRUARY 2023.

MOGENI J

JUDGE



In the virtual presence of:-

Mr Akello for Advocate.

Ms Munda holding brief for Mr Aredi for Respondent

Caroline Sagina - Court Assistant

