



**Kwengu & Company Advocates v Gold Lida Limited & another; Nairobi  
County Government (Interested Party) (Miscellaneous Application 391 of 2018)  
[2024] KEHC 14808 (KLR) (Commercial and Tax) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14808 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 391 OF 2018  
A MABEYA, J  
NOVEMBER 27, 2024**

**BETWEEN**

**KWENGU & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**GOLD LIDA LIMITED ..... 1<sup>ST</sup> CLIENT**

**FOTON EAST AFRICA LIMITED ..... 2<sup>ND</sup> CLIENT**

**AND**

**NAIROBI COUNTY GOVERNMENT ..... INTERESTED PARTY**

**RULING**

1. For determination is the Advocate’s Motion on Notice dated 2/8/2023. It is pursuant to Order 48 and section 52 of the [Advocates Act](#) Cap 16 Laws of Kenya, Paragraphs 1 and 6 of the [Advocates \(Remuneration\) Order](#), Rule 5 of the [Advocates \(Accounts\) Rules](#), sections 34(1), 1A, 1B and 3A of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, Order 40 Rule 11 and Order 52 Rule 6 of the [Civil Procedure Rules](#).
2. The Advocate prayed for the following orders: -
  - “I) Spent.
  - II) That pending the hearing and determination of this application inter-parties the Nairobi City County Government, the defendant/ judgement debtor in Nairobi High Court Commercial and Tax Division Civil Case No. 588 of 2015 be and is hereby compelled to remit to the Advocate/ Applicant, the sum



of Kshs. 106,736,84/83 from the sum of Kshs. 142,064,075/- due to the decree holder/client in pursuance to the decree dated 29th June 2023 in favour of Foton East Africa Limited the client/2nd respondent herein.

III) That the Honourable Court be pleased to make such further orders it deem expedient under the circumstances.”

3. The grounds for the application were that the Advocate obtained a judgment against the respondent in the sum of Kshs. 106,736,841/83 which has not been settled yet. That the respondents have since closed their businesses and relocated to China and have no known assets that can be attached in satisfaction of the decree herein, save for the decree in HCCC 588 OF 2015, Commercial and Tax Division.
4. The Advocate averred that the respondents and in particular the 2nd respondent is owed a sum of Kshs.142,064,075/- by the Nairobi City County Government in HCCC No. 588 of 2015 and unless the prayers sought are granted, the Advocate shall not realize its costs as taxed against the respondents.
5. In opposition, the Interested Party filed grounds of opposition dated 2/10/2023 as follows: -
  - “ 1. That the application shows no nexus to the claim by the Plaintiff/Applicant and the decree between the Interested Party and the 1st & 2nd Defendant/ Respondent.
  2. That the Plaintiff/Applicant has failed to demonstrate that there is a budget line for the amount set out in the decree against the 2nd Defendant/ Respondent.
  3. That the Plaintiff/Applicant has failed to demonstrate that payment of the amount stated in the decree is imminent.
  4. That the application offends the Government Proceedings Act, Cap 40.
  5. That the present application is an abuse of the court process and ought to be dismissed with costs to the Interested Party.”
6. At the time of writing this ruling, the Advocate had filed his submissions and further submissions dated 7/8/2023 and 13/10/2023, respectively. However, there were no other submissions on record.
7. I have considered the contestations of the parties and the respective submissions. The Advocate obtained judgment and decree against the respondents who were his clients for a sum of Kshs.106,736,841/83. This is clear from the decree issued on 1/8/2023 and produced as ‘CO-1’ by the Advocate.
8. The Advocate has now made the present application seeking to garnish the decretal sum owed to the 2nd client in HCCC 588/2015: *Foton East Africa Limited vs Nairobi City County Government*. Judgment was entered in favour of the 2nd client against the Interested Party in the aforementioned case whereby the Interested Party was ordered to pay a sum of Kshs.142,064,075/- as per annexure ‘CO-2’.
9. Order 23, rule 1 of the Civil Procedure Rules provides: -

“A court may, upon the ex parte application of a decree-holder, and either before or after an oral examination of the judgement-debtor, and upon affidavit by the decree-holder or his advocate, stating that a decree has been issued and that it is still unsatisfied and to



what amount, and that another person is indebted to the judgement-debtor and is within the jurisdiction, order that all debts (other than the salary or allowance coming within the provisions of Order 22, rule 42) owing from such third person (hereinafter called the “garnishee”) to the judgement-debtor shall be attached to answer the decree together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the decree- holder the debt due from him to the judgement-debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.”

10. In the present case, the Interested Party has not denied being indebted to the 2nd client pursuant to the decree in HCCC 588/2015: Foton East Africa Limited vs Nairobi City County Government. It is not in dispute that the Advocate’s decree against the clients has not been satisfied and that the Interested Party is indebted to the 2nd client and is within the court’s jurisdiction.
11. In view of the foregoing, pursuant to Order 23 of the *Civil Procedure Rules*, I find that it is in the interest of justice to grant prayer 2 of the application. The Interested Party is hereby compelled to remit to the Advocate the sum of Kshs. 106,736,84/83 from the sum of Kshs. 142,064,075/- due to the 2nd client in pursuance of the decree dated 29/6/2023.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

