



**Kinyanjui Njuguna & Company Advocates v Board of Trustees,  
National Social Security Fund (Miscellaneous Application 182 of 2017)  
[2024] KEHC 14727 (KLR) (Commercial and Tax) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14727 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 182 OF 2017  
FG MUGAMBI, J  
NOVEMBER 22, 2024**

**BETWEEN**

**KINYANJUI NJUGUNA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**THE BOARD OF TRUSTEES, NATIONAL SOCIAL SECURITY  
FUND ..... RESPONDENT**

**RULING**

**Background and introduction**

1. Before the Court is an application dated 5<sup>th</sup> June 2024, seeking to review and set aside this Court's ruling of 24<sup>th</sup> May 2023 on the basis of an error apparent on the face of the record. The application is supported by an affidavit sworn by Kinyanjui Theuri on 3<sup>rd</sup> June 2024.
2. The application is grounded on the fact that this Court issued a ruling on the client's application dated 29<sup>th</sup> October 2018, which had already been heard and determined by another Judge, (Nzioka, J) on 29<sup>th</sup> April 2020. The matter that was actually before the Court for determination in the ruling of 24<sup>th</sup> May 2023 was the application dated 1<sup>st</sup> October 2018, in which the advocate sought entry of judgment for the sum of Kshs. 42,585,500/=.
3. According to the advocate, the ruling of 29<sup>th</sup> April 2020 on the application dated 29<sup>th</sup> October 2018 allowed the client's application for filing of a reference out of time, but was conditional upon the client making a payment within 21 days. Failure to meet this condition would result in the automatic reinstatement of the taxing master's ruling, which the client had sought to set aside by that application.



4. The client did not meet the conditions, prompting the advocate's application dated 1<sup>st</sup> October 2018, which sought to have the Certificate of Taxation converted into a decree of this Court.

### **Analysis and determination**

5. Despite being given the opportunity, the clients did not file any response to the application dated 5<sup>th</sup> June 2024. Be that as it may, I have considered the advocate's pleadings, submissions, authorities, and the evidence on record.
6. It is well-established law that an error apparent on the record must be self-evident and should not require argument to demonstrate its existence. The Court of Appeal, in *National Bank of Kenya Limited V Ndungu Njau*, (1997) eKLR, observed:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.”
7. The question, therefore, is whether, under the present circumstances, there exists such an error warranting this Court's review under Section 80 of the *Civil Procedure Act* and Order 45(1) of the Civil Procedure Rules. On the face of it, I note that the ruling of 29<sup>th</sup> April 2020 was a consolidated ruling in which this Court addressed several applications, including those dated 29<sup>th</sup> October 2018 and 1<sup>st</sup> October 2018.
8. In paragraphs 57 to 59 of the ruling, the Court outlined the prayers sought in the application dated 29<sup>th</sup> October 2018. In paragraphs 69 and 70, the Court further summarized the prayers sought in the application dated 1<sup>st</sup> October 2018. In paragraphs 132 to 135 of the consolidated ruling, the Court allowed the applications for an enlargement of time and specified the conditions attached to those orders.
9. I do therefore agree with the advocates that the ruling of 24<sup>th</sup> May 2023 was issued inadvertently and should not have addressed the application dated 29<sup>th</sup> October 2018. The application had already been considered and determined in the ruling of 29<sup>th</sup> April 2020, rendering it no longer open for further consideration. This Court cannot act as an appellate body over its own decisions. By virtue of the ruling dated 29<sup>th</sup> April 2020, this Court was functus officio.
10. The next issue for determination is whether the application dated 1<sup>st</sup> October 2018 should, in light of the circumstances, be allowed. I note that at paragraph 135 the Court noted that in default of compliance of payment of the sums ordered [by the client], the order setting aside the taxed advocate/client fees shall stand vacated without recourse to court.
11. As earlier noted, the client has not filed any response to this application. The advocate on the other hand asserts that the client has not complied with the orders of payment issued by the Court. In the absence of any evidence to the contrary by the client, what else is this Court to do? Despite recognizing that some of the issues raised may involve broader questions of public interest, the client has failed to take advantage of the opportunity to be heard on the reference. Instead, the client has remained indolent.
12. Given these circumstances, I am left with no choice but to allow the application dated 1<sup>st</sup> October 2018. This Court had already addressed the issue of consolidation in its previous ruling. Thus, any argument regarding the appropriateness of consolidation is now moot.



## **Disposition**

13. Accordingly, the application dated 5<sup>th</sup> June 2024 is granted as prayed with the consequence that:
- i. The ruling issued on 24<sup>th</sup> May 2024 is hereby set aside.
  - ii. The application dated 1<sup>st</sup> October 2018 is hereby allowed as prayed and consequently judgment is hereby entered in favour of the advocate/applicant in terms of the certificate of taxation dated 20/6/2018 for Kshs. 42,585,500/= plus interest at 14% p.a from 10/9/2014.
  - iii. This matter is consolidated with HCCC 543 of 2007 for the purposes of this application and the application dated 1<sup>st</sup> October 2018.
  - iv. The advocate shall have the cost of this application.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

