



**Evans Juma Matunda t/a E.M. Juma Ombui Advocates v African Merchant Assurance Co. Ltd  
(Miscellaneous Application E58 of 2020) [2023] KEHC 224 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 224 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E58 OF 2020**

**JM NGUGI, J  
JANUARY 26, 2023**

**BETWEEN**

**EVANS JUMA MATUNDA T/A E.M. JUMA OMBUI ADVOCATES . APPLICANT**

**AND**

**AFRICAN MERCHANT ASSURANCE CO. LTD ..... RESPONDENT**

**RULING**

1. The Applicant-Advocate (“the Advocate”) represented the Respondent in Civil Appeal No 202 of 2011: Langat Leonard and Another v Joyce Chepkoech Mutai. A dispute arose as to the payment of fees and the Advocate filed an Advocate-Client Bill of Costs dated November 30, 2020 for Kshs 280,432. The Taxing Officer taxed the Bill at Kshs 217,842 and a Certificate of Costs dated March 10, 2021 issued to that effect. The Advocate then commenced execution proceedings vide the Application for Execution filed in Court on March 26, 2021.
2. In further attempts to execute the Decree contained in the aforementioned Certificate of Costs, the Advocate filed the present Application dated May 21, 2021 seeking the following orders:
  1. Spent
  2. THAT leave be granted to Baseline Auctioneers and order do issue to them to break into the Respondents premises and execute the warrants herein issued on March 29, 2021.
  3. THAT the O.C.S Langata Police Station or any other Police Station whose jurisdiction the proclaimed property may be found be directed to provide security during the breaking
  4. THAT costs of this application be provided for.



3. The grounds upon which the orders are sought are contained in the affidavit dated May 21, 2021 by Evans Juma Matunda- Advocate. He depones that despite several reminders, the Respondent has failed and/or ignored to pay the amount necessitating the issuance of warrants and that any attempts to have auctioneers execute the said warrants have been futile since the Judgment Debtor's offices are always closed.
4. The Application is opposed through the affidavit dated July 6, 2021 sworn by Stella Kipsura- a Legal Officer at the Respondent. She depones that the Respondent's offices have always been open and there is no need for an order to break in.
5. She further depones that the Respondent had already paid to the Applicant Kshs 100,000 and hopes to clear the same within 30 days. She swears that the Respondent has explained to the Applicant its financial situation and its commitment to clear the outstanding balance out of good faith. She thus contends that there was no need to file the instant application and that no irreparable loss will be occasioned to the Advocate given that part of the decretal sum has been paid.
6. In response, the Advocate filed the Affidavit dated August 3, 2021 sworn by Sylvia Obura- Advocate. She denies the assertion that the Respondent has made part payment of Kshs 100,000. She states that the Cheque No 021825 purportedly drawn in favour of the Advocate was dishonoured and maintains that the Respondent's offices have always been closed.
7. When the parties appeared before me on June 30, 2022, I granted leave to the Respondent to file a Supplementary Affidavit to respond to the assertions by the Advocate that no payment had ever been made; and that the offices remained closed necessitating breaking. The Respondent did not comply. Neither did the Respondent file any submissions.
8. On the other hand, the Advocate filed submissions dated August 3, 2021. The Advocate submits that the Respondent is being dishonest by denying that its offices are always open or that they have paid Kshs 100,000 to the Applicant. The Applicant relies on *Stephen Maina Kimanga v Lucy Waitihira Mwangi & 2 Others* [2015] eKLR for the proposition that the Court has a duty to give effect to its orders where a party is unlawfully and unreasonably attempting to obstruct a lawful process.
9. The single issue for determination is whether breaking in orders are warranted in this case.
10. I note that the warrants were issued in this matter on March 29, 2021 and were set to expire on May 29, 2021. The Application herein was filed on May 24, 2022, about five days before the expiry of the warrants. While it may have been filed before the warrants expired, there were no existing warrants at the time of hearing the Application or at the time of making this Ruling.
11. However, the Respondent neither disputes that they were served with the Bill of Costs nor the Notice of Taxation, an indication that the Respondent has been aware of these proceedings but ignored to participate in them. The claim that the cheque meant to settle part of the decretal sum was dishonoured has also not been controverted by the Respondent. Other than stating that they are having financial difficulties, there has been no sign of good faith on the Respondent's part in settling the decretal sum. The long and shot of it is that the Respondent owes the Advocate the amounts taxed but has failed to pay. Additionally, the Respondent has made it impossible for the Advocate to execute.
12. While it is true that no warrants exist as at this time, it would be to worship at the altar of formalist technicality to punt on determining the real substantive issue which is the execution of valid court orders for payment of the amounts owed to the Advocate.



13. In the circumstances, I make the following orders:

1. The Respondent is hereby ordered to pay the entire decretal sum to the Advocate within 14 days of the date of this Ruling.
2. In the event of failure to comply with Order I above, the Advocate to be at liberty to reapply for issuance of warrants to execute the Certificate of Costs dated March 10, 2021.
3. Any new warrants of execution issued will carry with them an order permitting Baseline Auctioneers to break into the Respondents premises and execute any new warrants so issued in execution of the Certificate of Costs dated March 10, 2021.
4. The Advocate shall also have the cost of this Application\*\*

14 Orders accordingly.

**DATED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JANUARY, 2023**

**JOEL NGUGI**

**JUDGE**

**DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF JANUARY, 2023**

**HILLARY CHEMITEI**

**JUDGE**

