



**Mukabane & Kazungu Advocates t/a Mukabane Kagunza Advocates v  
 Barngetuny & another (Environment and Land Miscellaneous Application  
 E001 of 2024) [2025] KEELC 133 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 133 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**

**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2024**

**GMA ONGONDO, J**

**JANUARY 27, 2025**

**IN THE MATTER OF ORDER 51 RULE 1 AND 52 OF THE  
 CIVIL PROCEDURE RULES**

**-AND-**

**IN THE MATTER OF SECTION 48 & 51 OF THE ADVOCATES  
 ACT (CAP 16 LAWS OF KENYA (AND THE ADVOCATES  
 (REMUNERATION AMMENDMENTS ORDERS 2014).**

**-AND-**

**IN THE MATTER OF THE ADVOCATES/CLIENT BILL OF  
 COSTS**

**IN THE MATTER OF KAPSABET ENVIRONMENT & LAND  
 CASE NO. 29 OF 2021 FORMELY ELDORET ENVIRONMENT  
 AND LAND CASE NO. 61 OF 2014**

**BETWEEN**

**MUKABANE & KAZUNGU ADVOCATES T/A MUKABANE KAGUNZA  
 ADVOCATES ..... APPLICANT**

**AND**

**JOSEPH KIPTOO BARNGETUNY ..... 1<sup>ST</sup> RESPONDENT**

**PHILIP BARNGETUNY ..... 2<sup>ND</sup> RESPONDENT**



## RULING

1. This ruling is in respect of an application by way of a Notice of Motion dated 27<sup>th</sup> June 2024 commenced under, inter alia, section 51 (2) of the [Advocates Act](#) Chapter 16 of the Laws of Kenya and Order 11 (3) (1)(h) of the Civil Procedure Rules 2010 by the Applicants, Mukabane & Kagunza Advocates seeking the following orders;
  - i. That the Honourable court be pleased to convert the certificate of costs dated 24<sup>th</sup> May 2024 and issued on 24<sup>th</sup> May 2024 into a decree and judgment.
  - ii. That the costs of the application be awarded to the applicants.
2. The application is premised upon the single ground that the retainer of the applicants by the respondents is not denied. Also, in support of the application is the annexed affidavit of Stanley N. Kagunza Advocate and the certificate of costs dated 24<sup>th</sup> May 2024 (SNK-1).
3. Briefly, the applicants averred, inter alia; that they were instructed by the respondents to defend them in Kapsabet Environment and Land Court case No. No. 29 of 2021 formerly Eldoret ELCC No. 61 of 2014 John Kiptiony Bett alias Kiptiony Bett vs – Joseph Kiptoo Barngatuny and another. That it was mutually agreed that the Respondents were to pay the Applicants legal fees and disbursements in the suit. That the Respondents have failed to honour the agreement resulting in the certificate of costs (SNK – 1) annexed to the affidavit and it has not been challenged.
4. The Respondents were duly served with the application as disclosed in the affidavit of service sworn on 12<sup>th</sup> July 2024 by Morris Atila, a licenced process server. Be that as it may, the respondents failed to respond to the application or file submissions thereof.
5. Hearing of the application was by written submissions pursuant to the court’s directions given on 17<sup>th</sup> October 2024 and Order 51 Rule 16 of the Civil Procedure Rules 2010.
6. By the applicants’ submissions dated 18<sup>th</sup> November 2024, reference is made to the orders sought in the application, the grounds and the supporting affidavit and the agreed legal fees and disbursements arising out of Kapsabet ELCC NO. 29 of 2021. It was submitted in part that Advocate-Client bill of costs in the said suit was allowed at Kshs. 1,736, 927.5 /= and a certificate of costs was issued accordingly. That thus, the application be allowed as even the said certificate is unopposed. Reliance was made on, inter alia, Section 51 (2) of the [Advocates Act](#) (supra), Lubulellah & Associates Advocates-vs-N. K Brothers Limited (2014) eKLR and Okong’o Wandago & Company Advocates-vs-County Government of Migori (2021) KLR, to buttress the submissions.
7. Having considered the entire application, the applicants’ submissions inclusive of Lubulellah and Okong’o Wandago cases (supra) cited therein and the fact that the respondents did not file response (s) herein, is the instant application merited?
8. It is noteworthy that the respondents retained the applicants as stated in paragraph hereinabove. The same is unchallenged in this application.
9. Section 51 (2) of the [Advocates Act](#) Cap 16 (supra) stipulates; inter alia, that an order that judgment be entered for the sum certified to be due with costs.



10. In this application, the certificate of costs (SNK-1) has not been set aside or altered by the court thus, the same is final as to the amount of costs covered thereby. The retainer is not disputed and judgment be entered for the sum in accordance with the certificate of costs.
11. Notably, paragraph 7 of the Advocates Remuneration Order provides in part that; an Advocate may charge interest at 14 per cent per annum on disbursements and costs, whether by scale or otherwise.
12. This court has inherent and special powers under sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya as read with section 3 of the Environment and Land Court 2015 (2011) to grant orders sought in the application to meet the ends of justice. The main concern of the court is to do justice to the parties as held in Patel-vs-Highway Carriers (1986) LLR 258 (CAK).
13. Indeed, the unchallenged certificate of costs (SNK-1), is in place. The applicants have a vested right to the judgment and decree in consonant with the orders sought in the application, which ought to be effectual; see Shahmad-vs-Shamji Bros and another (1957) E A 438.
14. Wherefore, the application is firm and meritorious. The same is hereby allowed in terms of orders (i) and (ii) sought therein as set out in paragraph 1 (a) and (b) hereinabove.
15. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 27<sup>TH</sup> DAY OF JANUARY 2025.**

**G M A ONGONDO**

**JUDGE**

**Present;**

Mr. Kagunza learned Counsel for the Applicants

Walter, Court Assistant

