



Nyagah t/a S.N Nyagah Advocates v Mburu & another (The Administrators of the Estate of Mburu Muigai - Deceased in CMCC Succession Cause No. 260 Of 2020 Thika) (Environment and Land Miscellaneous Application E116 of 2024) [2025] KEELC 6121 (KLR) (22 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6121 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E116 OF 2024
CA OCHIENG, J
SEPTEMBER 22, 2025**

BETWEEN

**SALOME NYAMBURA NYAGAH T/A S.N NYAGAH
ADVOCATES APPLICANT**

AND

**FRANCIS MWANGI MBURU 1ST RESPONDENT
NANCY NJERI MBURU 2ND RESPONDENT
THE ADMINISTRATORS OF THE ESTATE OF MBURU MUIGAI - DECEASED
IN CMCC SUCCESSION CAUSE NO. 260 OF 2020 THIKA**

RULING

1. Vide a Ruling dated the 20th November, 2024, the Honourable Taxing Officer struck out the Applicant’s Bill of Costs dated 24th of June 2024. Dissatisfied with the said decision, the Applicant filed the instant Notice of Motion application dated 2nd December 2024, which is before this Court for determination. She seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That this Honourable court be pleased to review the orders striking out the Bill of Costs issued against the Applicant on 20th November 2024 and all other consequential orders.



- e. That the file be placed before the Honourable Deputy Registrar for re-taxation of the Applicant's Advocate-client's Bill of costs dated 24th June 2024.
 - f. That the costs of this application be in the cause.
2. The application is premised on grounds on its face and on the Applicant's supporting affidavit. She avers that about 17th November 1989, then practicing as a partner in the firm in the name and style of Njoroge Nyaga & Co. Advocates, she was instructed by Gatagama Housing Estate (1981) Limited to offer legal services on behalf of its members relating to subdivision of Land Reference No.13537/111 and allocating the sub-plots to its members. Further, that the said letter indicated that the company would collect the legal fees for the services rendered from its members to pay her firm. She asserts that her firm did act as instructed and obtained title to Land Reference No.18506/19 on behalf of Mburu Muigai (deceased), thereby spending money in processing the title. She explains that she contacted the deceased in his lifetime in a bid to get legal fees and have the title deed collected. Further, after Mr. Mburu Muigai 's demise, his children who are the Respondents herein instituted Thika Succession Cause No. 260 of 2022 and among the properties listed in the matter, is LR 18506/19.
 3. She claims that the Respondents started demanding release of the title to LR No. 18506/19 registered to Mburu Muigai (deceased) without committing to pay her for services rendered in obtaining the said title. She explains that at first, the Respondents had committed to pay her legal fees but later changed their minds and referred the matter to the Advocates Complaints Commission who directed her to tax the Bill of Costs, which she did.
 4. She contends that vide its Ruling dated 20th November 2024, the Court dismissed her Advocate-Client Bill of costs dated 24th June 2024 without consideration that she had fully rendered her services to the estate of deceased, who was a member of Gatagama Housing Estate (1981) Limited. Further, that the Court also cited lack of documentation to support the extent of Gatagama Housing Estate (1981) Limited's instructions to her firm. She further explains that the same is attributed to the demise of the majority of the said Company's officials and that due to the trust the company had in her firm, it just forwarded documents and left it upon the firm to collect the outstanding fees from members on collection of titles, since they did not envisage a scenario where members' would refuse to pay.
 5. She contends that the Respondents have through their advocates written to her seeking release of the title and that she will be prejudiced if she releases the same without being paid for work done.
 6. The application is opposed by the Respondents who filed Grounds of Opposition contending that the Applicant has without the Leave of the Court sneaked in documents previously not presented during the hearing and determination of her Bill of Costs dated 24th June 2024 by the Deputy Registrar. Further, that the same has been fraudulently manufactured specifically to establish a nexus between the Applicant and Mburu Muigai (Deceased).
 7. They contend that the Taxing Officer having dismissed the Bill of Costs dated 24th of June 2024, there is nothing to be stayed. They aver that the Applicant was instructed by a third party Gatagama Housing Estate (1981) Limited and not by them. They pointed out that the Applicant had previously three years before the filing of the Bill of Costs, only demanded storage charges, which was disputed and upon instructions by the Law Society of Kenya that the Applicant releases the title, she proceeded to file the Bill of Costs in issue.
 8. The application was canvassed by way of written submissions.



Submissions

9. The Applicant submits that this Court has power to review under Section 80 of the *Civil Procedure Act* and Section 45 of the Civil Procedure Rules, which sets the rules for review. Further, that in the Ruling dated 20th November 2024, the Deputy Registrar made a mistake on the face of the record since she did not consider how her firm got instructed including the fact that the instruction letter from Gatagama Housing Estate (1981) Limited indicated that her law firm would collect legal fees for services rendered, from the members. Further, that since the Respondents' father was a member of the Company and her law firm having discharged its mandate, his estate is liable to pay her fees.
10. To buttress her averments, she relied on the following decisions: *National Bank of Kenya v Ndungu Njau* [1997] eKLR and *Nyamogo & Nyamogo Advocates v Kogo* [2001] EA 173.
11. The Respondents in their submissions argued that it is settled law that at the appellate and or review stage, new evidence can only be adduced by formally seeking leave to adduce the same thus the new evidence annexed herein being e-mail communication between the Applicant and the Respondents' advocate should be struck off. To this end, they relied on the case of *Gitau & another v Dame* (Civil Appeal E483 of 2021) [2024] KEHC 7084 (KLR) (Appeals) (11 June 2024) (Judgment).
12. They submitted that it is trite that the Court will not interfere with the decision of the Taxing Officer unless it is shown that she erred in principle and that since the Applicant was acting for a third party, it can only claim from the said third party, (Gatagama Housing Estate (1981) Limited) and not from them. Further, that in the absence of proof of a retainer, the Court will treat the Advocate as having acted without authority.
13. To buttress their averments, the Respondents relied on the following decisions: *Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited* [2017] eKLR, *Omulele & Tollo Advocates v Mount Holdings Limited* [2016] eKLR, *Gilani and Company Advocates v Ebrahim* (Miscellaneous Application E012 of 2021) [2023] KEHC 19895 (KLR) (Family) (23 June 2023) (Ruling) and *Nyangito & Company Advocates v Doinyo Lessos Creameries Ltd* [2014] eKLR .

Analysis and Determination

14. Upon consideration of the instant Notice of Motion application including the supporting affidavit, Grounds of Opposition and rivaling submissions, the only issue for determination is whether this Court should review the Ruling of the Taxing Officer dated the 20th November 2024 and submit the Bill of Costs dated 24th June 2024 for re - taxation.
15. The Applicant seeks a review of the Ruling of the Taxing Officer issued on 20th November 2024, in which she struck out, her Advocate-Client Bill of Costs dated 24th June 2024. The decision was made on the basis that upon perusal of the Letter of instruction dated 17th November 1989 from Gatagama Housing Estate (1981) Limited, there was no instructions from Mr. Muigai (deceased) to the Applicant and or the other one hundred and thirty-nine (139) members from the list of members provided by the Applicant. The Court determined that the instructing party was Gatagama Housing Estate (1981) Limited.
16. On their part, the Respondents argue that the Applicant was not instructed by their father (Mburu Muigai-deceased) and that his estate has no obligation to pay for services rendered without a retainer. They also argue that no demand has issued from Gatagama Housing Estate (1981) Limited, as the entire purchase price and closing costs were settled prior to the processing and issuance of title to Mr. Muigai - deceased. They also take issue with new evidence availed by the Applicant at this stage.



17. On review, Section 80 of the *Civil Procedure Act* provides that:

“Any person who considers himself aggrieved;

- a. By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

18. While Order 45 of the Civil Procedure Rules provides inter alia:

“(1) Any person considering himself aggrieved;

- a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

19. On review, the Court of Appeal stated as follows in *Stephen Gathua Kimani v Nancy Wanjira Waruingi t/a Providence Auctioneers* [2019] eKLR:

“....An order for review is restricted to parameters set out by the law...”

20. The Applicant’s ground for review is that the Hon. Taxing Officer committed an error on the face of the record in her Ruling of 20th November 2024 by failing to consider the entire circumstances of the matter, including the fact that the Applicant could recover fees from members of Gatagama Housing Estate (1981) Limited, which had retained her firm.

21. Section 2 of the *Advocates Act* defines a client to include any person who, as a principal or on behalf of another or a trustee or personal representative or in any other capacity has power, express and implied to retain or employ an Advocate and any person who is or may be liable to pay an Advocate any costs.

22. In this instance the deceased was a member of Gatagama Housing Estate (1981) Limited that instructed the Applicant to process titles on their behalf, for its members. The Applicant indeed processed the deceased title but is yet to receive the legal fees. The Respondents have not disputed the fact that their late father was a member of Gatagama Housing Estate (1981) Limited nor the fact that it is the



Applicant that processed the members' titles. The Respondents claim that the entire purchase price and closing costs were settled prior to the processing and issuance of title to Mr. Muigai – deceased, but I note no evidence was tendered to that effect. In my view, since the Applicant processed the deceased title, which is being claimed by the Respondents, they are hence beneficiaries of the process undertaken by the Applicant.

23. In the case of *Mereka & Company Advocates v Zakhem Construction (Kenya)* [2014] KEHC 1257 (KLR) the learned Judge held that:

“It is wrong for the client would assume that the advocate would shoulder costs attracted by a project that they stand to benefit. It is in the interest of justice that the said Bill of Costs dated 18th June 2012 proceeds for taxation before a taxing master for purposes of ascertaining what is due to the advocates...”

24. The Supreme Court in *Robert Tom Martins Kibisu v Republic* [2018] eKLR stated thus:

“An application cannot be said to be for correction of errors when it is anchored and is replicate with allegation of discontentment with the Court’s finding and/or appreciation of legal principles and their interpretation thereof. Such dissatisfaction is normally a ground for appeal.”

25. Based on the facts as presented while relying on the legal provisions I have cited as well as associating myself with the quoted decisions, I find that the Applicant indeed demonstrated that there was an implied Advocate Client relationship between herself and the Respondents as they have benefited from services she rendered. I opine that the Taxing officer erred in principle by striking out the impugned Bill of Costs on the ground that there was no Advocate Client relationship, yet the Applicant had indeed rendered services culminating in the issuance of the deceased title. I further note that the Respondents never proffered any evidence before Court to confirm that the deceased indeed paid the legal fees for purposes of processing the title herein, which they claim.

26. It is against the foregoing that I find the Notice of Motion dated the 2nd December, 2024 merited and will allow it.

27. I proceed to set aside the Taxing Officer’s Orders issued on 20th November 2024 in respect to the Applicant’s Bill of Costs dated the 24th June 2024 and direct that the said Bill of Costs be placed before a different Taxing Officer other than Hon. Judith Omollo, for re-taxation.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Odipo for Respondents

Njuguna Mungai for Applicant

Court Assistant: Joan

