



**Bong v Owners of Motor Fishing Vessel "Ocean Sniper" & 2 others (Admiralty Claim 001 of 2024) [2025] KEHC 3004 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3004 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADMIRALTY CLAIM 001 OF 2024  
J NGAAH, J  
MARCH 14, 2025**

**BETWEEN**

**LEE JUN BONG ..... CLAIMANT**

**AND**

**OWNERS OF MOTOR FISHING VESSEL "OCEAN SNIPER" .. 1<sup>ST</sup> DEFENDANT**

**IMAGE FRONT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**EAST AFRICAN FISHING MANAGEMENT LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before court is a motion dated 11 December 2024 filed on even date. The provision of the law under which it is filed has not been stated but the applicant. Messrs. Odunga and Associates Advocates, a firm of advocates that has described itself as an "interested party" in the proceedings seeks the following orders: -

- "1. That this matter be certified urgent and the same be heard ex-parte and service be dispensed with in the first instance.
2. That pending hearing and determination of;
  - (i) This Application inter-partes, the Honourable Court be pleased to issue an Order directed at the Defendants to release to M/s Odunga & Associates Advocates, the sum of Kshs.160,406.70/- being the sum taxed and ordered as payable in Mombasa HCCOMMMISC E059/2024 (Odunga & Associates Advocate -v- Lee Jun Bong)
  - (ii) The suit or any other Applications[s] pending before the Court, the Honourable Court be pleased to issue an Order directed at the



Defendants to release to Mis Odunga & Associates Advocates, the sum of Kshs. 160,406.70/- being the sum taxed and ordered as payable in Mombasa HCCOMMMISC E059/2024 [Odunga & Associates Advocates -V-Lee Jun Bong

3. That costs of this Application be awarded to the Applicant.”
2. The affidavit in support of the application has been sworn by Mr. Maurice Odunga. According to Mr. Odunga, his firm of advocates, previously acted for the claimant in the admiralty suit. He subsequently filed an advocate-client bill of costs in this Honourable Court as Miscellaneous Civil Application No. E059 of 2024, apparently after his services were terminated and the claimant engaged new advocates. The bill of costs was taxed at Kshs. 160,406.70.
3. Mr. Odunga has sworn that the claimant is a foreign national with no known assets in Kenya from which his firm of advocates can recover its fees. It is for this reason that he has filed the instant application for recovery of his fees as taxed.
4. Ms. Naomi Tororei swore a replying affidavit as “a director of the defendant.” It is not clear in which of the two companies named as defendants Ms. Tororei is a director. She has sworn that on 16 July 2024, a consent was recorded between the claimant and the defendants on settlement of the claim due to the claimant.
5. Further, the initial payment of USD 22,500 was paid to the claimant through the firm of Ms. Odunga & Associates Advocates. Subsequent payments were made on 2 December 2024 and 16 January 2025 and that the defendant is ready and willing to settle the balance.
6. I have not been able to establish from the proceedings when the order joining Messrs. Odunga and Associates Advocates in these proceedings as interested parties was made but I note that on 20 January 2025, Mr. Anangwe, the learned counsel for the claimant informed the court that he had no objection the firm being included as an interested party.
7. Proceeding on the presumption that the firm of Messrs. Odunga and Associates Advocates is an interested party, the question that this Honourable Court is confronted with is whether the interested party can pursue its own cause in in this matter. The answer is obviously in the negative. In the circumstances of this case, section 51(2) of the *Advocates Act*, cap. 16 provides that means through which an advocate may recover his fees from a client. It states that:

51.(2). The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.
8. There is no doubt after taxing his bill, Mr. Odunga obtained a certificate of taxation but which he has improperly described in his affidavit as a “certificate of costs”. The order which the court is entitled to make on such a certificate, including an order for entry of judgment of the amount due and payable to an advocate, can only be in the matter of the advocate and not in a suit in which he has been joined as an interested party.
9. The question of the extent to which the interest of an interested party in a suit goes and whether an interested party can pursue his own cause in a suit in which he has been joined in that capacity was addressed by the Supreme Court in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)*



(Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling).  
In that case the court held as follows: -

“41. Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties’ before the Court. The determination of any matter will always have a direct effect on the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the Court. This is true, more so, in proceedings that were not commenced as Public Interest Litigation (PIL), like the proceedings now before us.

42. Therefore, in every case, whether some parties are enjoined (sic) as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues, or introduce new issues for determination by the Court. One of the principles for admission of an interested party is that such a party must demonstrate that he/she has a stake in the matter before the Court. That stake cannot take the form of an altogether a new issue to be introduced before the Court.”

10. It is worth noting that the interested party in the instant application did not cite any provision under which it could possibly seek the orders that it has sought, in its capacity as an interested party. The applicant has not only acknowledged this omission but has also conceded that the principle dispute and which this Honourable Court should be concerned about is between the claimant and the defendants. At paragraph 6 of Mr. Odunga’s affidavit, he has sworn as follows:

“6. I am aware as an officer of this Court that even where there are pending issues before this Court, the same do not concern my firm and it is only fair and justice demands that the sum so taxed be remitted to me, even as the principal parties to the Suit iron out their outstanding issues.”

11. Even then, the learned counsel has not given any reason or any sufficient reason why he could not, for instance, initiate his own cause and attach the debts due to the claimant from the defendants under order 23 rule 1 of the Civil Procedure Rules. This rule reads as follows:

1. Order for the attachment of debts [Order 23, rule 1]

(1) A court may, upon the ex parte application of a decree-holder, and either before or after an oral examination of the judgment-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 judgment-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 judgment-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 judgment-



debtor or so much thereof as may be sufficient to satisfy the decree together with the costs aforesaid.

12. Rather than seek the orders the interested party has sought in a suit in which it is limited as to the extent to which it can pursue its own cause, the interested party could easily have obtained a judgment under section 51(2) of the *Advocates Act* and, eventually, sought to have it executed by way of attachment of debt under the forgoing provision of the law.
13. For these reasons, I hold the interested party's application to be misconceived and bad in law. It is hereby struck out with costs. In view of the order made on 18 February 2025, this ruling shall apply mutatis mutandis in High Court Commercial Admiralty Cause No. E002 of 2024. Orders accordingly.

**SIGNED, DATED AND DELIVERED ON 14 MARCH 2025.**

**NGAAH JAIRUS**

**JUDGE**

