



**Dewdrop Enterprises Limited v Muthee & another (Petition 399 of 2018)  
[2025] KEHC 2922 (KLR) (Constitutional and Human Rights) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2922 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION 399 OF 2018**

**EC MWITA, J**

**MARCH 7, 2025**

**BETWEEN**

**DEWDROP ENTERPRISES LIMITED ..... PETITIONER**

**AND**

**WILLIAM MUTHEE ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF MAGISTRATE'S COURT, MILIMANI COMMERCIAL  
COURTS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling on the petitioner's application dated 9<sup>th</sup> May 2022. The application is brought under Orde 3 rule 9 of the Civil Procedure Rules, sections 1A and 1B of the *Civil Procedure Act* and several Articles of *the Constitution*. It seeks an order declaring that the petitioner has fully satisfied the judgment and decree dated 28<sup>th</sup> March 2019. The application is supported by the grounds on its face, the affidavit of the same date sworn by Edward Thiong'o Wachira and written submissions.
2. The petitioner's position is that the court dismissed the petition and ordered it to pay costs. The application for review of that judgment was dismissed on 8<sup>th</sup> July 2021. The appeal in the Court of Appeal against the ruling is still pending. In the meantime, the 1<sup>st</sup> respondent has filed a party and party bill of costs dated 30<sup>th</sup> March 2022 for Kshs. 673, 500 for taxation.
3. According to the petitioner, the 2<sup>nd</sup> respondent in the judgment dated 28<sup>th</sup> November 2019 found the 1<sup>st</sup> respondent to be in breach of order of directions No 2 in the directions issued on 12<sup>th</sup> June 2013. That finding has not been set aside and the 1<sup>st</sup> respondent continues to disobey that order in violation of the petitioner's right to enjoyment of property which undermines the rule of law and unjustly enriches the 1<sup>st</sup> respondent to the petitioner's detriment on the amount of Kshs. 3,405,110



claimed in prayer v together with interest thereon at the rate of Kshs. 2,000 per week from 1<sup>st</sup> October 2014 until payment in full.

4. The petitioner argued that the amount the 1<sup>st</sup> respondent owes exceeds the amount claimed as costs in the party and party bill of costs. Unless the orders sought in the application are granted, the 1<sup>st</sup> respondent will continue with contravention of *the Constitution* through purported execution of the judgment and decree.
5. According to the petitioner, the 2<sup>nd</sup> respondent dismissed the 1<sup>st</sup> respondent's suit but stated at para 18 that the 1<sup>st</sup> respondent was in breach of the directions on payment of rent through his advocate which he had not done.
6. The petitioner relied on *Maingi Mutisya Nzioka v Mbuki Kisavi* [2014] eKLR that a perpetrator of fraud should not be allowed to keep the fruits of his fraud, and *L U International Ltd v Kenya National Trading Corporation & another* [1995] eKLR that a wrong doer must not be allowed to benefit however remotely for his wrong doing.
7. The 1<sup>st</sup> respondent opposed the application through grounds of opposition dated 5<sup>th</sup> December 2022; a replying affidavit and written submissions. The 1<sup>st</sup> respondent argued that the application is incompetent, misconceived, and is meant to delay the cause of justice; execution and avoid satisfying the decree.
8. The 1<sup>st</sup> respondent relied on *First American Bank of Kenya v Shah & others* [2002] EACA for the position that a court cannot interfere with the taxing officer's decision on taxation. Further reliance was placed on the decision in *University of Nairobi & another v Moses* [2022] KECA 45(KLR), citing *Joreth Ltd v Kigano & Associates Advocates* [2002] eKLR that a taxing officer exercises discretion when taxing a bill of costs and his discretion will not be interfered with unless it was wrongly exercised.
9. I have considered the application, the response and arguments by parties. The petitioner seeks a declaration that the costs awarded to the 1<sup>st</sup> respondent have been paid on the basis that the 1<sup>st</sup> respondent also owes the petitioner some money as stated by the 2<sup>nd</sup> respondent in its judgment delivered on 28<sup>th</sup> November 2019. In essence, the petitioner wants the court to block taxation of the 1<sup>st</sup> respondent's bill of costs pending before the taxing officer.
10. The judgment of this court dismissed the petition with costs. The 1<sup>st</sup> respondent has a right to have his bill of costs taxed and certified by the taxing officer. Until that is done, no one can say how much is due to the 1<sup>st</sup> respondent as costs.
11. Second, if the petitioner is owed money by the 1<sup>st</sup> respondent as it is argued, then the petitioner has a right to pursue its rights under the judgment delivered by the 2<sup>nd</sup> respondent. It is up to the petitioner to get the decree and execute, it if indeed there is a finding of the court to that effect.
12. This court having pronounced itself on the issues that parties placed before it, it cannot assume any other jurisdiction and determine matters that are outside its mandate such as finding that any decree or money has been paid through a different matter that was not before it. If the petitioner is owed money by the 1<sup>st</sup> respondent, it can only legally pursue that money in the case where the order was made and execute that decree or order, but not in this court and this file.
13. In the circumstances, I find no merit in the application. It is declined and dismissed. I make no order on costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF MARCH 2025**



**E C MWITA**  
**JUDGE**

