



In re Estate of Kipketer Arap Rotich (Deceased) (Succession Cause 193 of 2008) [2025] KEHC 2872 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2872 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 193 OF 2008
JK SERGON, J
MARCH 13, 2025
IN THE MATTER OF THE ESTATE OF KIPKETER ARAP ROTICH**

BETWEEN

WILSON KETER 1ST PETITIONER

ALICE CHEPKEMOI ROTICH 2ND PETITIONER

RUSI CHEPNGENO ROTICH 3RD PETITIONER

AND

MARY CHEPKOECH ROTICH APPLICANT

AND

M/S E.K. KORIR & CO. ADVOCATES RESPONDENT

RULING

1. The application coming up for hearing is a chamber summons dated 29th November, 2024 seeking the following reliefs;
 - (i) Spent
 - (ii) That this Honourable Court be pleased to stay, set aside and/or Vacate the Orders issued by the Honourable the Deputy Registrar on the 28th November, 2024 for the same were issued ultra-vires.
 - (iii) That upon issuance of order (ii) above, this Honorable Court be pleased to issue the necessary orders with respect to the 4th Petitioner/Applicant's application dated 26th November, 2024 for ends of justice to be met.
 - (iv) That necessary directions be given for the ends of justice to be met.



2. The application premised on grounds on the face of it and the annexed affidavit of Mary Chepkoech Rotich, the 4th Petitioner/Applicant herein.
3. She avers that she is the 4th Petitioner/Applicant herein duly conversant with all the facts pertaining to this suit hence competent to make this affidavit.
4. She avers that on 26th November 2024, she instructed her advocates on record to make an application seeking to stay the proceedings before the Honourable Taxing Master/Deputy Registrar and which application was made to this honourable Court sitting as the Judge and not the Deputy Registrar.
5. She avers that on the 28th November 2024, the Honourable Deputy Registrar of this Court did make substantive orders affecting the aforementioned application dated 26th November, 2024 which orders outstretched the Honourable Deputy Registrar's mandate and jurisdiction donated to her under Order 49 of the Civil Procedure Rules.
6. She avers that the orders issued by the Honourable Deputy Registrar are to the effect that notwithstanding the grave allegations that she raised in her application dated 26th November, 2024 that she had not been represented by the Applicant-Advocate herein, the Hon. Deputy Registrar would still proceed to deliver her Ruling on a purported Advocate-Client Bill of costs on the 4th December, 2024, without her being heard hence rendering the earlier application dated 26th November 2024 moot and an academic exercise.
7. She avers that the term "Court" as contemplated at Rule 9(5), Rule 49 and Rule 73 of the *Probate & Administration Rules*, under which Rules the application dated 26th November, 2024 is premised, means this Honourable Court sitting at the Judge and not sitting as the Deputy Registrar, consequently, the Orders issued on the 28th November 2024 by the Honourable Registrar ought to be vacated to enable the matter be presented before the Honorable Judge for determination of that application.
8. She avers that unless the application herein is certified urgent and heard forthwith, she stands to suffer irreparable damage for reason that the Honourable Deputy Registrar will proceed to deliver her ruling on an impugned Advocate-Client Bill of Costs dated 31st May, 2024 when there existed no advocate-client relationship between her and the Applicant-Advocates herein and even before her very substantial averments as to representation are laid bare for a proper determination as to whether indeed there existed any such a relationship between myself and the firm of M/s E.K.Korir Advocates to warrant her to pay them the colossal amount that is alleged.
9. Erick Kipngeno Korir Respondent filed grounds of opposition based on the following grounds;
 - a. The Orders dated 28th November 2024 issued by the Deputy Registrar in respect to our Bill of Costs against the 4th Petitioner/Respondent are proper and good under the law.
 - b. The application vide the Chamber Summons by the 4th Petitioner/Respondent is bad in law incompetent, incurably defective and it is intended to aid the 4th Petitioner/Respondent from not meeting the end of her bargain against the successful conclusion of the succession matter which took the 4th Respondent /Petitioner sixteen (16) years to conclude. And fails to comply with Paragraph 11 of the Advocates Remuneration Order.
 - c. The jurisdiction to determine disputes and tax bill of costs as filed is conferred to the Deputy Registrar under the *Advocates Act* and the *Advocates Remuneration Order* and the Deputy Registrar sits in taxation as a Judicial Officer under the meaning of Article 161 (1) & (3) of the *Constitution* with the powers to exercise unfettered judicial jurisdiction in matters of taxation of filed bills of cost.



- d. That in this matter, the Deputy Registrar acted within her powers and the law as provided for in Rule 16 of the [Advocates Remuneration Order](#) hence the Court Orders that were issued by the Taxing Officer dated 28th November in respect to their bill of Costs were proper and not ultra-vires as claimed by the 4th Petitioner/Respondent.
- e. That under Rule 13A of the [Advocates Remuneration Order](#) and the Court of Appeal decisions, the Deputy Registrar has the jurisdiction to determine issues and disputes that arise from the [Advocates Act](#) and the [Advocates Remuneration Order](#).
- f. There existed Advocate-Client Relationship between the Applicant herein and the 4th Petitioner/Respondent s clearly provided for and regulated by the [Advocates Act](#) and the Advocates Remuneration Order. Sections 45, 46 & 48 of the [Advocates Act](#) provides for stages in which the Advocate-Client relationship can be created. In this respect, the Applicant/4th Petitioner/Respondent' relationship commenced when the Applicant herein took instructions from the family of the deceased to act for the 1st,4th and 5th houses of the deceased.
- g. That there is no law that stipulates that the Advocate and her/his client must reduce their agreement in writing and this may be implied where: (i) the client acquiesces in and adopts the proceedings; or (ii) the client is estopped by his conduct from denying the right of the advocate to act or from denying the existence of the retainer; or (iii) the client has by his conduct performed part of the contract; or (iv) the client has consented to a consolidation order/in this case the certificate of confirmation of grant as issued by the Court.
- h. Under Section 107 of the [Evidence Act](#), the Applicant has proved existence of the Client-Advocate Relationship herein vide the Notice of Appointment dated 20th September 2019 filed in court on 22nd September 2019, The 4th Petitioner/Respondent was all the time aware of this Notice of Appointment and she never objected to it and/or attended court regularly in lieu of her Advocates to prove that she had not consented to representation by the firm of E. K Korir & Company Advocates.
- i. Similarly, proceedings before the Court indicate clearly that the firm of E. K. Korir Advocates acted for the 1st, 4th & 5th houses, with the 4th Petitioner/Respondent being the 4th wife of the deceased and one of the beneficiaries of the estate of the deceased.
- j. In the Court file and before the family appeared before Justice Ongeri, there arose the need to have this matter concluded owing to having been filed in 2008. Parties were required to be represented by firms of Advocates. We indeed informed the Honourable Judge that we acted for the 1st, 4th & 5th Houses while the 2nd & 3rd Houses of the deceased were represented by J.K. Kirui & Company Advocates.
- k. That 4th Petitioner/Respondent's application which largely relied on the provisions of the [Civil Procedure Act](#) and Rules which provisions do not apply to these proceedings as the same are under the [Advocates Act](#). Consequently, the [Civil Procedure Act](#) and Civil Procedure Rules cannot be invoked to cover for any scenario that has not been provided for under the [Advocates Act](#) and the [ARO](#) in taxation proceedings before a taxing officer who only has power to tax bills and not to entertain any other applications especially those brought under the [Civil Procedure Act](#) and Rules.
- l. The jurisdiction of a Deputy Registrar under the [Advocates \(Remuneration\) Order](#) is distinct and separate from jurisdiction of the Deputy Registrar under the [Civil Procedure Act](#) and



therefore the procedure adopted in one cannot be substituted in the other hence the application herein is improper and should be dismissed with costs to the Applicant.

- m. The cardinal principles of setting aside a decision of the taxing officer which are well established from the law and judicial authorities have not been met and or demonstrated by the 4th Petitioner herein hence the Honourable Court should exercise restraint and caution in interfering with orders and or findings of the taxing officer.
 - n. The Application to set aside and dismiss the bill of costs is unmerited and the chamber summons should be dismissed in entirety and with costs.
10. The Respondent herein filed a replying affidavit in response to the application and avers that the Court Orders dated 28th November 2024 issued by the Deputy Registrar in respect to their Bill of Costs filed against the 4th Petitioner/Respondent are proper and good under the law.
 11. He avers that application by the 4th Petitioner/Respondent does not comply with provisions of Paragraph 11 of the Advocates Remuneration Order, is bad in law, incompetent, incurably defective and it is intended to aid the 4th Petitioner from not meeting the ends of her bargain against the successful conclusion of the succession matter which took sixteen (16) years to conclude.
 12. He avers that the Deputy Registrar in this matter possesses the jurisdiction to determine disputes and tax the bills of cost as filed having been conferred to the Deputy Registrar by the Advocates Act and the Advocates Remuneration Order and the Deputy Registrar sits in taxation matters as a Judicial Officer under the meaning of Article 161 (1) & (3) of the Constitution with the powers to exercise unfettered judicial jurisdiction on matters of taxation before her court.
 13. He avers that in this matter, the Deputy Registrar acted within her powers and the law as provided for in Rule 16 of the Advocates Remuneration Order hence the Court Orders that were issued by the Taxing Officer dated 28th November, 2024 in respect to their bill of Costs were proper and not ultra-vires as claimed by the 4th Petitioner/Respondent.
 14. He avers that under Rule 13A of the Advocates Remuneration Order and the Court of Appeal decisions, the Deputy Registrar has the jurisdiction to determine issues and disputes that arise from the Advocates Act and the Advocates Remuneration Order.
 15. He avers that there exists the Advocate-Client Relationship between themselves and the 4th Petitioner/ Respondent clearly provided for and regulated by Sections 45 & 46 of the Advocates Act which provides for stages in which the Advocate-Client can be created and the Advocates Remuneration Order section 45, 46 and 48 of the Advocates Act.
 16. He avers that there is no law that stipulates that the Advocate and her/ his client must reduce their agreement in writing and this may be implied where: (i) the client acquiesces in and adopts the proceedings, or (ii) the client is estopped by his conduct from denying the right of the advocate to act or from denying the existence of the retainer: or (iii) the client has by his conduct performed part of the contract: of (iv) the client has consented to a consolidation order/ in this case the certificate of confirmation of grant as issued by the Court.
 17. He avers that he had demonstrated and proved under Section 107 of the Evidence Act, that;
 - a) There exists the Client-Advocate Relationship herein vide the Notice of Appointment dated 20th September 2019 filed in court on 22nd September 2019. The 4th Petitioner/ Respondent was all the time aware of this Notice of Appointment and she never objected to it and/ or attended court regularly in lieu of her Advocates to prove that she had not consented to representation by the firm of E.K. Korir & Company Advocates.



- b) Similarly, proceedings before the Court indicate clearly that the firm of E.K. Korir & Company Advocates acted for the 1st, 4th & 5th houses, with the 4th Petitioner/Respondent being the 4th wife of the deceased and one of the beneficiaries of the estate of the deceased.
- c) In the Court file and before all the family members appeared in person before Justice Ongeri, their parties were required to be represented by firms of Advocates. They indeed informed the Honourable Judge that they were before her under the instructions of the 1st, 4th & 5th Houses while the 2nd & 3rd Houses of the deceased were represented by J.K. Kirui & Company Advocates.
18. He avers that the 4th Petitioner/ Respondent's application largely relied on the provisions of the Civil Procedure Act and Rules which provisions do not apply to these proceedings herein as the same are under the Advocates Act.
19. He avers that the Civil Procedure Act and Civil Procedure Rules cannot be invoked in a scenario that has not been provided for under the Advocates Act and the Advocates Remuneration Order in taxation proceedings before a taxing officer who only has power to tax bills and not to entertain any other applications especially those brought under the Civil Procedure Act and Rules.
20. He avers that the jurisdiction of the Deputy Registrar under the Advocates (Remuneration) Order is distinct and separate from jurisdiction of the Deputy Registrar under the Civil Procedure Act and therefore the procedure adopted in one cannot be substituted in the other hence the application herein is improper and should be dismissed with costs to the Applicant.
21. He avers that the cardinal principles of setting aside a decision of the taxing officer are well established from the law and judicial authorities however, the 4th Petitioner in her application has not met and or demonstrated by the 4th Petitioner herem hence the Honourable Court should exercise restraint and caution in interfering with orders and or findings of the taxing officer.
22. He avers that from the Court Order dated 28/11/2024, the Deputy Registrar of the high court gave directions that the application be served on the 4th Petitioner and on the date of inter partes hearing the 4th Petitioner should have requested for the matter be placed before the Judge.
23. He avers that he swore this Affidavit in support of his grounds of Opposition and to confirm that the Deputy Registrar possesses the jurisdiction to handle the disputes arising from this matter and to conclusively tax the bill of costs.
24. He avers that he swore the Affidavit to confirm that they have proved vide the documents already filed, the court proceedings and the conduct of the 4th Respondents and as required under the Evidence Act that the Client-Advocate Relationship exists between them and the 4th Petitioner hence the bill of costs is in furtherance of her instructions in this succession matter and should therefore be taxed in the usual manner by the Deputy Registrar of the High Court.
25. He avers that the Advocates Act and the Advocates Remuneration Order serve the purpose of regulation and protection of the parties involved in civil or criminal matters as regards to remuneration and in this instance, prays that the Court protects them and cause the 4th Petitioner to remunerate for services rendered to her in this matter.
26. He therefore urged this court to find that the application to set aside and dismiss the bill of costs is unmerited and therefore dismiss it with costs.



27. This court, having considered the application and responses, finds that the sole issue for determination is whether to stay, set aside and/or vacate the orders issued by the Honourable Deputy Registrar on the 28th November, 2024 in respect to the Bill of Costs filed against the 4th Petitioner/Respondent.
28. On one part the applicant, contended that the registrar proceeded to deliver her ruling on an impugned Advocate-Client Bill of Costs dated 31st May, 2024 when there existed no advocate-client relationship between her and the Applicant-Advocates herein. On the other part, the respondent contended that there exists the Client-Advocate Relationship between the parties vide a Notice of Appointment dated 20th September 2019 filed in court on 22nd September 2019 and that proceedings before the Court indicate clearly that the firm of E.K. Korir & Company Advocates acted for the 1st, 4th & 5th houses, with the 4th Petitioner/Respondent being the 4th wife of the deceased.
29. This court has carefully considered the depositions by the parties and the proceedings before this court and finds that there indeed exists a notice of appointment dated 20th September, 2019 where Wilson Kipkorir Keter and Mary Chepkoech Rotich had appointed the Applicant-Advocate to come on record for purposes of the instant succession cause. Similarly, in the proceedings before this court, it is evident that E.K. Korir & Company Advocates, the Applicant-Advocate herein was representing the 1st, 4th & 5th Houses whereas the 2nd & 3rd Houses of the deceased were represented by J.K. Kirui & Company Advocates. It is therefore the finding of the court that there existed an Advocate-Client relationship between the parties and therefore the orders issued by the Deputy Registrar on 28th November 2024 in respect to the Bill of Costs against the 4th Petitioner/Respondent are proper and good under the law.
30. The Advocate-Client relationship is central as it gives jurisdiction to the Taxing Master to entertain a bill of costs. In *Wilfred N. Konosi T/A Konosi & Co. Advocates v Flamco Limited* [2017] eKLR, the Court of Appeal stated as follows:

“The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the *Advocates Remuneration Order*. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in *Taparn v Roitei* [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the *Advocates Remuneration Order* confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered. The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such a relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill. As a Judicial Officer sitting to tax a bill of costs between an advocate and his or her client, a taxing officer must determine the question whether he/she has jurisdiction to tax a Bill if the issue of want of advocate/client relationship is raised. An allegation that the advocate/client relationship does not obtain in taxation of an advocate/client Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question.”

31. Consequently, the chamber summons dated 29th November, 2024 lacks merit. It is hereby dismissed with costs awarded to the Applicant-Advocate/Respondent herein.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 13TH DAY OF MARCH, 2025.



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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Mwita for 4th Petitioner/Applicant

Miss Chebet holding brief for Korir for Respondent

