



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chris N. Mutuku & Co. Advocates v Rao; I & M Bank Kenya  
Limited (Interested Party) (Insolvency Petition E010 of 2021)  
[2025] KEHC 4617 (KLR) (Commercial and Tax) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4617 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INSOLVENCY PETITION E010 OF 2021**

**MN MWANGI, J**

**APRIL 4, 2025**

**IN THE MATTER OF THE INSOLVENCY ACT NO. 18 OF 2015**

**-AND-**

**IN THE MATTER OF MARK PRIME PROPERTIES LIMITED (IN ADMINISTRATION)**

**-AND-**

**IN THE MATTER OF SECTIONS 534, 560, 560A, 576  
& 591 OF THE INSOLVENCY ACT NO. 18 OF 2015**

**-AND-**

**IN THE MATTER OF THE ADVOCATES ACT**

**BETWEEN**

**CHRIS N. MUTUKU & CO. ADVOCATES ..... APPLICANT**

**AND**

**PONANGIPALLI VENKATA RAMANA RAO ..... RESPONDENT**

**AND**

**I & M BANK KENYA LIMITED ..... INTERESTED PARTY**

**RULING**

1. The applicant filed a Notice of Motion application dated 1<sup>st</sup> June 2024 pursuant to the provisions of Sections 1A, 1B, 3, 3A & 63(e) of the *Civil Procedure Act*, Article 159 of the *Constitution of Kenya*, Order 1 Rule 10, Order 40 Rules 1 & 2 and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010. The applicant prays for orders that it be joined to these proceedings as a creditor/interested party and also



- seeks Court approval to file and prosecute recovery proceedings for legal fees owed by Mark Prime Properties Limited (in Administration).
2. The applicant also prays for orders that it be allowed to retain all files, documents, and property in its custody related to Mark Prime Properties Limited (in Administration) under the Advocate's legal lien on account of its outstanding fees. In addition, the applicant prays for an order for injunction restraining the respondent from creating or duplicating alternative leases or registration documents for properties in Le Mac Building in which the leases/registration documents are currently in the applicant's custody, pending the hearing and determination of the recovery proceedings, and an order for priority settlement of its legal fees over other creditors, particularly those whose claims arose after 21<sup>st</sup> March 2021.
  3. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Chris Ndolo Mutuku, an Advocate of the High Court of Kenya practising in the name and style of the applicant herein. He averred that on 30<sup>th</sup> March 2021, the respondent took over the management and administration of Mark Prime Properties Limited, the registered owner of all that piece of land known as LR No. 1870/V/271 upon which Le Mac Building is erected. He further averred that as at 8<sup>th</sup> October 2020, the said property was valued at Kshs.5,000,000,000/=.
  4. Mr. Mutuku stated that at the time of the respondent's coming on board, the applicant was the Company's Legal Counsel and it handled lease registration of all leases and conveyances in Le Mac building, litigation, and arbitral matters. He deposed that despite initially retaining the applicant for most cases, the respondent later changed legal representation but failed to pay the applicant Kshs.50,000,000/= in outstanding legal fees.
  5. Mr. Mutuku stated that he maintained custody of crucial legal documents, including leases, and regularly updated the respondent, who never requested for their release. He stated that the respondent appointed new Counsel and directed third-party purchasers to demand the leases directly from the applicant. He claimed that the respondent has funds to pay new Counsel but deliberately avoids settling the applicant's fees using deceptive tactics, including possibly duplicating documents. He stated that since the Company is in administration, Court approval is required for recovery proceedings under Section 560 of the *Insolvency Act*. He maintained that the respondent has ignored requests for payment or consent for legal recovery, thus necessitating the filing of the instant application.
  6. In opposition to the application, the respondent filed a replying affidavit sworn on 12<sup>th</sup> June 2024 by Mr. Ponangipalli Venkata Ramana Rao, the respondent herein. He averred that legal fees for services rendered before administration are classified as unsecured debt, subject to the standard of proof and payment process, whereas fees for services rendered during administration, if any, rank as priority claims under the *Insolvency Act*. Mr. Rao contended that the amount being claimed by the applicant in legal fees has neither been agreed upon nor taxed by Court. He asserted that the applicant did not properly serve a bill of costs or adhere to the required 30-day Notice period under the *Advocates Act*. He claimed that the applicant is unlawfully withholding critical company documents that were entrusted to it for lease registration, which is impermissible for exercising a right of lien.
  7. Mr. Rao asserted that granting a lien would cripple the administration, as the withheld documents are essential for completing property transactions and distributing assets to creditors. He averred that the applicant has improperly disclosed privileged client information in Court filings without consent. He contended that the cause of action for recovery of legal fees has not yet crystallized, as statutory procedures have not been followed. Mr. Rao invited the applicant to submit proof of debt to be assessed in line with other unsecured creditors.



8. In opposition to the instant application, the interested party filed a replying affidavit sworn on 11<sup>th</sup> November 2024 by Ms Peris Wairimu Chege, the interested party's Senior Legal Manager. She contended that the instant application was irregular as it was filed without the required consent of the Administrator or Court approval, as mandated by Section 560(1)(d) of the *Insolvency Act*. She further contended that the applicant had been retained as a legal service provider before the company was placed under administration. Additionally, she claimed that the applicant failed to disclose a Deed of Settlement dated 11<sup>th</sup> October 2023 and a consent dated 24<sup>th</sup> October 2023, in which they represented the company's Directors. She stated that the Deed allegedly granted the Administrator consent to sell unsold units and outlined steps for dispute resolution, cooperation, and termination of the administration process.
9. Ms Chege averred that the instant application contradicts and seeks to frustrate an existing Agreement. She deposed that the applicant's claim for legal fees lacks specificity, as the fees were neither agreed upon nor taxed by the Court. She deposed that the applicant failed to distinguish between fees accrued before and during administration, making its claim vague. She stated that pre-administration fees classify the applicant as an unsecured creditor subject to priority rules under the *Insolvency Act*. She further stated that the applicant has not served a bill of costs as required under Section 48 of the *Advocates Act*, making the claim premature. Ms Chege also asserted that the Kshs.50,000,000/= claim is arbitrary and unsubstantiated. She stated that the applicant's action of withholding leases obstructs the administration process and violates the statutory moratorium under Section 560 of the *Insolvency Act*. She contended that the value of the lien is disproportionate, as the value of the leases exceed the claimed fees, potentially amounting to wrongful retention of property (conversion).
10. Canon Aluminium Fabricators Limited, a creditor of Mark Prime Properties Limited (In administration), filed a replying affidavit in opposition to the instant application sworn on 6<sup>th</sup> December 2024 by Mr. Vishal Parbat Lalji Pindoria, a Director of the said company. He stated that the creditor was a purchaser of a commercial unit in Le Mac Building. He contended that after the termination of Coulson Harney LLP, documents were transferred to the applicant, but despite purchasers paying legal fees and an additional 0.5% for lease registration, the process remained incomplete. Mr. Parbat averred that the applicant's refusal to register leases while holding them as lien for unrelated legal fees was not only unjustified but also harmful to purchasers' rights. He contended that the leases should be released to the Administrator for registration purposes to protect the administration process and purchasers' interests.
11. In a rejoinder, the applicant filed a further affidavit sworn on 12<sup>th</sup> June 2024 by Mr. Chris Ndolo Mutuku, an Advocate of the High Court of Kenya practising in the name and style of the applicant herein. He averred that they have continuously provided legal services to the company during administration, but the respondent has not settled post-administration legal fees since 26<sup>th</sup> March 2021. He claimed that despite proposing a fee based on the value of the leases in 2022, the respondent rejected the request. He affirmed the applicant's legal right to exercise a lien over the files, noting that Section 560 of the *Insolvency Act* does not allow the respondent to interfere with such rights. He clarified that the applicant is not seeking preferential payment but Court approval to tax its fees while preserving its security. Mr. Mutuku asserted that if the respondent believes retaining the files obstructs administration, he could provide security for the fees, such as surrendering a unit from the available properties.
12. The instant application was canvassed by way of written submissions which were highlighted on 11<sup>th</sup> February 2025. The applicant's submissions were filed on 29<sup>th</sup> July 2024 by the law firm of Chris N.



Mutuku & Company Advocates, while the respondent's submissions were filed by the law firm of Munyao, Muthama & Kashindi Advocates on 4<sup>th</sup> October 2024.

13. Mr. Mutuku, learned Counsel for the applicant cited the case of *John Harun Mwau v Simone Haysom & 2 others* [2021] eKLR, and submitted that the applicant as a creditor under the *Insolvency Act*, has a legitimate interest and the right to participate in these proceedings so as to protect his entitlement to just payment. He referred to Section 560A of the *Insolvency Act* and the case of *Owiti, Otieno and Ragot Advocates v Mumias Sugar Co. Limited (Under Administration)* [2020] eKLR, and further submitted that as an unpaid provider of legal services benefiting the Company and Administrator, the applicant has a legitimate interest in the Company's affairs and a direct stake in how the Administrator manages the Company's affairs. Counsel cited the case of *Hoggers Limited (In Administration) v John Lee Halamandres & 11 others* [2021] eKLR, and asserted that Administration cannot in any way interfere with existing rights of a lien or retention of property.
14. It was submitted by Mr. Mutuku that the Administrator's newly appointed lawyers have stated that they will prepare fresh leases, raising concerns that this is an attempt to bypass and/or undermine the applicant's right of lien. He argued that if this happens, the applicant's right of lien will be rendered meaningless. Counsel asserted that the applicant's right to fair payment has been infringed, worsened by the Administrator's refusal to discuss the matter or respond to requests for legal recourse. He contended that by ignoring these pleas, the Administrator has unfairly assumed the roles of adversary, judge, and executioner, to the applicant's detriment.
15. Mr. Tugee, learned Counsel for the Administrator cited the case of *Owiti, Otieno and Ragot Advocates v Mumias Sugar Co. Limited (Under Administration)* (*supra*), and submitted that the applicant is not automatically entitled to leave to commence legal proceedings against a Company under administration, as discretion must be exercised cautiously under Section 560A of the *Insolvency Act*. He argued that the applicant has not demonstrated significant loss that it will suffer if leave is denied, and in any event, part of the applicant's claim relates to fees accrued during administration, which if proved, would be settled like other legal expenses.
16. Counsel contended that the applicant has not properly served a bill of costs to the respondents or provided sufficient Notice under Section 48(1) of the *Advocates Act* since its Notice issued on 30<sup>th</sup> May 2024, allowed only three (3) days before filing the application herein, far shorter than the required 30-day period.
17. It was stated by Counsel that Courts have established that an Advocate can only exercise a lien over a client's files, property, or money once their fees are due. He further stated that fees become due only after serving a bill of costs on the client and, if unpaid, after taxation by the Court. Mr. Tugee asserted that Courts have held that an Advocate cannot withhold a client's property or money for unpaid fees that have not been ascertained through taxation, as reaffirmed by the Court in the case of *Simon Njumwa Magbanga v Joyce Jeptarus Kangongo t/a Chesaro & Co. Advocates* [2014] eKLR. He stated that the applicant has neither produced nor served a bill of costs, or shown that it remains unpaid. Counsel contended that the correspondence relied upon by the applicant is inadmissible and does not constitute a valid bill of costs. He submitted that the documents held by the applicant were provided for a specific purpose being registration of leases, which remains incomplete. He asserted that an Advocate cannot claim a lien over documents held for such a purpose.

### **Analysis and Determination.**

18. I have considered the instant application, the grounds on the face of it, and the affidavits filed in support thereof. I have also considered the replying affidavits by the respondent, the interested party and one of



the company's creditors, as well as the written submissions filed by Counsel for the parties. The issue that arises for determination is whether the instant application is merited.

19. The applicant's case is anchored on the fact that it rendered legal services to Mark Prime Properties Limited (In Administration) before and after the said Company was placed under Administration, but to date, the respondent has refused to settle its legal fees which is currently in excess of Kshs.50,000,000/=, despite a demand for the same having been made vide a letter dated 30<sup>th</sup> May 2024. The applicant contends that as an unpaid provider of legal services benefiting the Company and the Administrator, it has a legitimate interest in the Company's affairs and a direct stake in how the Administrator manages the Company's affairs.
20. The respondent in opposition to the instant application asserted that the amount being claimed by the applicant in legal fees has neither been agreed upon nor taxed by Court. Further, that the applicant did not properly serve a bill of costs or adhere to the required 30-day Notice period under the Advocates Act. The respondent contended that the cause of action for recovery of legal fees has not yet crystallized, as statutory procedures have not been followed. The interested party stated that the applicant had not served a bill of costs as required under Section 48 of the Advocates Act, making the claim premature.
21. Since the applicant's position as a creditor arises from unpaid legal fees for services rendered by the applicant to the Company in its professional capacity, this Court first has to determine whether the applicant's claim for recovery of costs is mature. An Action for recovery of costs is provided for under Section 48 of the Advocates Act which provides that –
  1. Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before expiry of the period of one month.
  2. Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.
  3. Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.
22. From the above provisions, it is clear that under the law, no suit can be brought to recover costs due to an Advocate until one month after a bill for such costs has been delivered or sent by registered post to the client. The bill may be in a summarized form and signed by the Advocate or a partner in the law firm. However, if there is reasonable cause, verified by affidavit, to believe that the client is about to leave Kenya or abscond from the Court's jurisdiction, legal action can be initiated before the elapse of the one-month period.
23. In order for the applicant to be joined in this suit as a creditor, it first has to prove the Company's indebtedness and the extent of the debt so as to be considered as a creditor in the case. To do this, the applicant needs to produce either a certificate of taxation or a judgment in its favour against the Company for the sums claimed. It is not contested that the applicant has not yet taxed its costs. It however seeks this Court's approval to initiate recovery proceedings. The applicant has to demonstrate compliance with Section 48(1) of the Advocates Act. In a bid to show compliance with the said provisions, the applicant claims that the letter dated 30<sup>th</sup> May 2024 addressed to the respondent, serves as the bill for the costs owed by the Company.



24. On perusal of the said letter, it is my finding that it does not qualify as a bill of the applicant's costs since the letter was simply notifying the Company and the respondent that the applicant would not release the documents it holds in respect to the registration of leases until the respondent confirms its willingness to pay the applicant's legal fees of Kshs.50,000,000/= arising out of its representation of the Company over the years. The applicant further advised the Company and the respondent that the legal fees can either be agreed upon between themselves or taxed by Court. Even if the letter dated 30<sup>th</sup> May 2024 was deemed to be a proper bill of the applicant's costs, the instant application was filed three (3) days after the date of the said letter contrary to the provisions of Section 48(1) of the *Advocates Act* which requires a one-month waiting period before suing to recover costs.
25. The applicant has neither alleged nor demonstrated that there is reasonable cause to believe that the Company is about to leave Kenya or abscond from the Court's jurisdiction, in order for the applicant to be exempted from the one-month period provided for under Section 48(1) of the *Advocates Act*.
26. I therefore agree with the respondent and the interested party that since the applicant has not served the Company with a bill of costs as mandated by Section 48(1) of the *Advocates Act*, its claim is premature as the cause of action for recovering legal fees has not yet crystalized, and more so, since the required statutory procedures have not been exhausted.
27. The upshot is that the instant application is premature. It is hereby struck out with costs to the respondent and the interested party.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4<sup>TH</sup> DAY OF APRIL 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Ms Misere for Instra Solutions Ltd (creditor) and also h/b for Mr. Mutuku for the applicant

Ms Wangongu h/b for Mr. Tugee for the respondent & also h/b for Mr. Wawire for the interested party

Ms B. Wokabi – Court Assistant.

