



REPUBLIC OF KENYA



**Kaloki Ilia & Mbugua Advocates LLP & another v Kaloki & another (Civil Case E194 of 2024) [2025] KEHC 5199 (KLR) (Civ) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5199 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE E194 OF 2024**

**SN MUTUKU, J  
APRIL 7, 2025**

**BETWEEN**

**KALOKI ILIA & MBUGUA ADVOCATES LLP ..... 1<sup>ST</sup> PLAINTIFF**

**JUDY WANJIKU MBUGUA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**RITA KANINI KALOKI ..... 1<sup>ST</sup> DEFENDANT**

**KALOKI ILIA & ASSOCIATES ADVOCATES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**The Notice of Motion**

1. This ruling is in respect of the Notice of Motion dated 15.01.2025 (the Motion) brought by Kaloki Ilia & Mbugua Advocates LLP and Judy Wanjiku Mbugua (hereafter the 1<sup>st</sup> and 2<sup>nd</sup> Applicants). It is anchored on Sections 1A, 2B and 3A of the *Civil Procedure Act* (CPA); Order 51, Rule 1 of the Civil Procedure Rules (CPR); Schedule 1, Sections 7, 8 and 9 of the *Limited Liability Partnership Act*; Section 4 of the *Contempt of Court Act*, Topic 3 Standard of Professional Practice and Ethical Conduct of the Law Society (Code of Standards of Professional Practice and Ethical) Act; and Article 159(2) of *the Constitution* of Kenya.
2. The Application is supported by the grounds set out on its body and stated in the Supporting Affidavit of the 2<sup>nd</sup> Applicant sworn on 15.1.2025. The Application sees the following orders:
  - i. Spent.



- ii. That pending the hearing and determination of this Application, the 1<sup>st</sup> Defendant/Respondent be ordered to immediately release all client files under the management of the 2<sup>nd</sup> Plaintiff/Applicant in her custody to the 2<sup>nd</sup> Plaintiff/Applicant.
  - iii. That pending the hearing and determination of this Application, the 1<sup>st</sup> Defendant/Respondent be ordered to release all personal effects belonging to the 2<sup>nd</sup> Plaintiff/Applicant currently in her possession.
  - iv. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue orders directing Lofty Corban Investments Limited and Standard Investment Bank to transfer monies held in the 1<sup>st</sup> Plaintiff/Applicant's accounts, namely Standard Investment Bank Account Number XXXXXXXX and Lofty Investments Limited Account Number XXXXXXXXXXXXXXXXXXXX, to the 2<sup>nd</sup> Plaintiff/Applicant's accounts, being J.W. Mbugua & Associates Advocates, held at Standard Investment Bank Account Number XXXXXXXX and Lofty Corban Investments Limited Account Number XXXXXXXXXXXXXXXXXXXX.
  - v. That pending the hearing and determination of this Application, the 1<sup>st</sup> Defendant/Respondent be ordered to pay into the 2<sup>nd</sup> Plaintiff/Applicant's account number XXXXXXXXXXXXXXXX, held under the account name J.W. Mbugua & Associates Advocates at Stanbic Bank, the sum of Kshs. 150,000 paid by Prudential Group Limited in satisfaction of the Decretal Sum in Milimani HCCOMMA/E064/2023 via cheque numbers 257, 269, and 270, each for Kshs. 50,000, or in the alternative, to release the original cheques to the 2<sup>nd</sup> Plaintiff/Applicant for further action.
  - vi. That pending the hearing and determination of this Application, the 1<sup>st</sup> Defendant/Respondent be ordered to pay into the 2<sup>nd</sup> Plaintiff/Applicant's account number XXXXXXXXXXXXXXXX, held under the account name J.W. Mbugua & Associates Advocates at Stanbic Bank, the sum of Kshs. 75,000 paid by Yalfa Cargo Handling Limited on 6<sup>th</sup> June 2024 as filing fees in Milimani HCCOMM/E405/2024-Yalfa Cargo Handling Limited Vs Pan Africa Supply Chain Solution Company Limited and Sinotruck Machinery and Equipment Company Limited.
  - vii. That costs of this Application be borne by the Respondents.
3. It is deposed, in the Supporting Affidavit, that the instant Motion is the result of the blatant disregard and non-compliance on the part of Rita Kanini Kaloki (hereafter the 1<sup>st</sup> Respondent) with court orders and directions previously made on 14.10.2024; 6.11.2024; 26.11.2024; and 4.12.2024, requiring her to release all client files and personal effects in her custody and belonging to the 2<sup>nd</sup> Applicant to the 2<sup>nd</sup> Applicant.
  4. The 2<sup>nd</sup> Applicant has further stated that despite having provided an unequivocal undertaking on 4.11.2024 that she would release the relevant client funds, the 1<sup>st</sup> Respondent continues to unlawfully withhold the said funds to the tune of Kshs. 21,795,165.83 as at 31.12.2024 and being held in the accounts belonging to the 1<sup>st</sup> Applicant whose details are set out hereinabove. That, clients have persistently demanded the release of interest accrued in the respective sums, to enable them meet their personal and professional obligations. Further, that, the 1<sup>st</sup> Respondent has declined to release additional client monies amounting to Kshs. 225,000/- emanating from the decrees issued in Milimani HCCOMMA/E064/2023 and Milimani HCCOMM/E405/2024, thereby forcing the 2<sup>nd</sup> Applicant to liquidate her personal savings in order to settle monies requested by the relevant clients.



5. It is the assertion by the 2<sup>nd</sup> Applicant that attempts by her advocates at contacting the advocates for the 1<sup>st</sup> Respondent for purposes of releasing the abovementioned monies, documentation and personal effects belonging to the 2<sup>nd</sup> Applicant, have proven unsuccessful.
6. It is the assertion by the 2<sup>nd</sup> Applicant that the continued retention of the client files and funds has resulted in grave prejudice to both the 2<sup>nd</sup> Applicant and her clients, adding that she subsequently registered the firm of J.W. Mbugua & Associates Advocates in a bid to effectively manage her client's affairs and that it would, therefore, be in the best interest of justice for the orders sought in the Motion to be granted.

#### **- The Replying & Supplementary Affidavit**

7. The 1<sup>st</sup> Respondent has sworn a Replying Affidavit on 19.02.2025 in opposition. She has deposed that any and all monies held by Kaloki Ilia & Associates Advocates (hereafter the 2<sup>nd</sup> Respondent) belong to the said firm's clients and hence it would constitute an illegality for an order of release of the said monies to be made. The 1<sup>st</sup> Respondent has, however, conveyed her willingness to release any monies and files as instructed by the clients themselves, upon settlement of any outstanding legal fees.
8. The 1<sup>st</sup> Respondent has also deposed that contrary to the averments being made in the Motion to the effect that she has disregarded previous directions made by this court, her advocates previously wrote to the advocates for the 2<sup>nd</sup> Applicant requesting the 2<sup>nd</sup> Applicant to make the necessary arrangements to collect her personal effects and relevant documents, of which the said Applicant acknowledged receipt and indicated that she would collect the said documents and effects on 31.01.2025. Nevertheless, the 2<sup>nd</sup> Applicant did not show up. That some of the requested files as well as the 2<sup>nd</sup> Applicant's personal effects therefore remain in the custody of the 1<sup>st</sup> Respondent's advocates.
9. It is equally the 1<sup>st</sup> Respondent's assertion that contrary to the averments made in the Motion, she has released some of the client files to the 2<sup>nd</sup> Applicant, pursuant to the instructions of the relevant clients. The 1<sup>st</sup> Respondent has further averred that order (iv) of the Motion in particular, is unfair for the reason that the amounts whose release is sought therein are being held in an account belonging to the 1<sup>st</sup> Applicant, of whom both the 2<sup>nd</sup> Applicant and the 1<sup>st</sup> Respondent are partners. That, consequently, the latter is equally entitled to a share of the proceeds thereof.
10. The 1<sup>st</sup> Respondent has proceeded to aver that notwithstanding the subsistence of the 1<sup>st</sup> Applicant, the 2<sup>nd</sup> Applicant has since proceeded to register and operate a separate Law Firm under the name J.W. Mbugua & Associates Advocates without her consent. The 1<sup>st</sup> Respondent has stated that she remains unaware of the existence of any unequivocal undertaking for release of the purported funds, as alleged in the instant Motion, adding that she has no knowledge of any expenses personally incurred by the 2<sup>nd</sup> Applicant in meeting clients' obligations. The 1<sup>st</sup> Respondent has further denied withholding or otherwise retaining client funds in her personal account, as alleged in the supporting affidavit to the Motion.
11. Regarding client files, the 1<sup>st</sup> Respondent has deposed that while she acknowledges receipt of various requests for release thereof, there is a need for a complete audit to first be undertaken before the requisite files can be released, which position has already been communicated to the relevant clients.
12. On the premise of those assertions, the 1<sup>st</sup> Respondent deposed that the Motion ought to be struck out with costs.
13. The 2<sup>nd</sup> Applicant filed a Supplementary Affidavit sworn on 24.02.2025. She reiterated her earlier averments and further stated, inter alia, that while the items being held by the advocates for the 1<sup>st</sup>



- Respondent were released to her on 20.02.2025, the 1<sup>st</sup> Respondent continues to unlawfully retain some of her personal effects as well as the client files listed in the Schedule annexed to her affidavit. That while she continues to operate under the name and style of the 1<sup>st</sup> Applicant, the 1<sup>st</sup> Respondent on her part has ceased practicing under the said Partnership and has instead reverted to the 2<sup>nd</sup> Respondent.
14. The 2<sup>nd</sup> Applicant has averred, further, that the client files being retained by the 1<sup>st</sup> Respondent are in respect of matters in which the respective clients have already conveyed their preference of specifically having the 2<sup>nd</sup> Applicant represent them, with the relevant communication being made to the 1<sup>st</sup> Respondent, to that effect.
  15. The 2<sup>nd</sup> Applicant averred that the 1<sup>st</sup> Respondent has adamantly failed to release the client file and funds pertaining to one Mr. Robert Njoroge Muthumbi, to the tune of Kshs. 21,795,165.83 as at 31.12.2024, yet the said funds ought to have been held purely in trust for the abovementioned client and who has already settled the legal fees for the 1<sup>st</sup> Applicant.
  16. The 2<sup>nd</sup> Applicant admitted to operating the firm of J.W. Mbugua & Associates Advocates, adding that she has opened corresponding bank accounts for the purpose of executing her fiduciary duties to the clients belonging to the 1<sup>st</sup> Applicant, which action she deemed necessary upon her exclusion by the 1<sup>st</sup> Respondent, from accessing and running the affairs of the said Applicant.

#### **Oral Submissions**

17. The Motion was canvassed through oral submissions. The 2<sup>nd</sup> Applicant, in her submissions, reiterated her earlier averments, that she only managed to collect a few of her personal effects and client files, but that certain files remain in the custody of the 1<sup>st</sup> Respondent notwithstanding communication by the respective clients indicating their wish to have the 2<sup>nd</sup> Applicant act for them; that she continues to trade under the name of the 1<sup>st</sup> Applicant; that notwithstanding the absence of a notice of change of advocates, she should not be precluded from receiving the relevant client files.
18. She further reiterated her earlier averments that the 1<sup>st</sup> Applicant continues to hold funds in trust for one Robert Njoroge Muthumbi, to the tune of Kshs. 21,795,165.83, which funds ought to be released to the said person.
19. It is her submission that the gist of the instant Motion is that the 1<sup>st</sup> Respondent continues to unlawfully withhold client files and funds, making it necessary for the orders sought in the Motion to be granted.
20. Mr. Wekhombe, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, submitted that the remaining client files are being held by the 1<sup>st</sup> Respondent on account of unpaid legal fees and that upon settlement of the requisite fees, the relevant files will be released, otherwise, the 1<sup>st</sup> Applicant stands to lose money. The counsel submitted that while the clients have a right to choose their preferred advocate, the 2<sup>nd</sup> Applicant is intent on taking away clients brought into the 1<sup>st</sup> Applicant firm by the 1<sup>st</sup> Respondent.
21. The Counsel contended that the sum of Kshs. 21,000,000/- referenced hereinabove is being rightfully held on behalf of the 1<sup>st</sup> Applicant, in view of unpaid legal fees. That upon payment thereof, the said monies will be released. He argued that the 2<sup>nd</sup> Applicant has failed to demonstrate that the 1<sup>st</sup> Respondent has deposited any client monies into her personal bank account.
22. In rejoinder, the 2<sup>nd</sup> Applicant contended that the 1<sup>st</sup> Respondent continues to manage the affairs of the 1<sup>st</sup> Applicant, whose funds are being held in accounts belonging to the 2<sup>nd</sup> Respondent, with the 1<sup>st</sup> Respondent having sole access thereto. That the question of fees as well as an audit of the client files and monies are matters to be adjudicated in the main hearing.



## Analysis and Determination

23. The court, upon considering the Motion, the Supporting Affidavit, the Replying Affidavit opposing the Motion, and the rival oral arguments by both parties, observed that no substantive orders are sought in the instant Motion. I have carefully read the Motion and noted the orders sought in it. It is apparent to me that all the orders sought relate to the interim stage of the Motion, pending the hearing and determination of it, and therefore, all the orders sought in that motion are now spent, the Motion having progressed to full hearing through oral submissions of the parties on 26.2.2025.
24. The record of the court shows that, previously, the 2<sup>nd</sup> Applicant had filed two (2) separate interlocutory applications seeking various orders against the 1<sup>st</sup> Respondent. However, when the parties attended court on 4.12.2024, the court (Meoli, J) recorded the following order:
- “(a) In order to expedite the resolution of the dispute, the parties agree to forego interlocutory applications and will instead proceed directly to the hearing of the suit on 26.2.2025.
  - (b) In the meantime, the Plaintiffs shall, within 14 days, comply with Order 11 CPR, and the Defendants shall equally comply within 14 days of service of the Plaintiffs’ documents and witness statements.
  - (c) The parties agree that pending the hearing of the suit:
    - i. The existing clients of the 1<sup>st</sup> Plaintiff shall be notified in writing that they are at liberty to elect which of the partners of the 1<sup>st</sup> Plaintiff Firm will henceforth act for them.
    - ii. Upon such election being made by a client, the files relating to the client shall be released to the advocate (Partner) appointed and instructed by the client.
    - iii. The parties herein shall desist from engaging in direct correspondence or communication between them, and only communicate through their respective advocates.
    - iv. Despite the contents of limbs (a) and (b) above of this order, counsel for the parties agree to pursue the appointment of a mediator by the Law Society of Kenya, to undertake a mediation process with a view to an amicable settlement of this dispute.”
25. This instant Motion was filed shortly after the above order in complete disregard of that consent order and before the hearing date of the main suit which was fixed for 26.2.2025. The Applicants approached this court through a certificate of urgency which was placed before me on 20.1.2025. Although this court did not certify the matter as urgent, it nonetheless directed parties to appear before it on 18.2.2025 for directions, on which date the matter was placed for hearing on 26.2.2026. As a result of this Motion, the issue of confirming whether parties have complied with Order 11 CPR was not pursued.
26. I have taken time to understand the Plaint filed herein against the Motion. To my mind, majority of the issues being canvassed in the respective affidavits relating to the instant Motion largely touch on the merits of the dispute, which matters can only be adequately and sufficiently canvassed at the hearing of the suit. Regarding the issues relating to the release of clients’ files, raised by the parties in this Motion,



the record is clear that this court (Meoli, J.) addressed them adequately on how to proceed with them, in the order I have replicated above.

27. It is my considered view, after careful analysis of the matter before me, that in the absence of any existing substantive orders sought in the Motion under determination, this court finds that the instant Motion is unsustainable. Consequently, the Notice of Motion dated 15.01.2025 is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
28. For good order and as the parties prepare to canvass the main suit, it is advisable to comply with the orders of this court issued by Meoli, J by consent of the parties on 4.12.2024, given that those orders are subsisting.
29. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 7<sup>TH</sup> APRIL 2025.**

**S. N. MUTUKU**

**JUDGE**

In the presence of:

Ms. J. W. Mbugua for the Plaintiffs/Applicants

Mr. Aim holding brief for Mr. Wekhomba for the Defendants/Respondents

