



REPUBLIC OF KENYA



**Chege v Kamau Kinga & Co. Advocates (Miscellaneous Civil Application
184 of 2018) [2025] KEHC 5930 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION 184 OF 2018**

A MSHILA, J

MAY 9, 2025

BETWEEN

ELIZABETH WANJIRU CHEGE APPLICANT

AND

KAMAU KINGA & CO. ADVOCATES RESPONDENT

RULING

1. This is a Notice of Motion application dated 23rd November, 2023 brought by the Applicant under Order 51 Rule 1,3, and 15 of the Civil Procedure Rules 2010 and Section 3 and 1A, 1 B and 3A of the [Civil Procedure Act](#) seeking for the following orders;-
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to set aside the ex-parte orders issued on 10th November 2023 arising from the Notice to Show Cause filed by Kamau Kinga & Co. Advocates.
 - d. Costs of the application be in the cause.
2. The application is supported by the affidavit dated 23rd November 2023 sworn by Elizabeth Wanjiru Chege, the Applicant asserting the following:-
 - a. The Applicant was served via Whatsapp with an order of Committal to Civil Jail for a period of six months or until payment is made.
 - b. The Applicant was not served with the Notice to Show Cause leading to the issuance of the Warrant of Arrest.
 - c. The advocates previously on record for the Applicant had ceased acting for the Applicant but had not filed an application to cease acting.



- d. The Applicant fears on credible grounds that she may be arrested.
 - e. There has been a tremendous miscarriage of justice because a Warrant of Arrest has been issued against the Applicant, flowing from a Notice to Show Cause application that was heard and determined ex-parte, denying the Applicant her constitutional right to be heard.
 - f. There is an application dated 21st November 2023 pending determination in Succession Cause No. 64 of 2018 which is the succession cause that gave rise to the instant suit, wherein one of the orders sought is that the litigation costs incurred and/or ordered against the Applicant in Miscellaneous Application No.184 of 2018 Kamau Kinga & Co. Advocates v Elizabeth Wanjiru Chege Matera be borne by the Estate of the Late Grace Wairimu Chege and not the applicant in her personal capacity.
3. Elizabeth K. Waweru, an advocate, swore an affidavit dated 1st December 2023 in response to the instant application stating the following;-
- a. The Applicant was served with the Notice to Show Cause on 8th September 2023 and an affidavit of service was sworn on 13th September 2023.
 - b. The Applicant had instructed the Respondent to act for her in a succession cause and subsequently the Respondent filed a Bill of Costs as it was entitled to its instruction fees.
 - c. The Bill of Costs was taxed and the Respondent was issued with a Certificate of Taxation on 14th June 2019.
 - d. The Applicant filed a Reference against the Ruling of the Bill of Costs which was dismissed on 13th May 2021.
 - e. The Respondent filed an application to enter judgment for the decretal sum in the Certificate of Taxation. The application was allowed on 19th October 2021 and a decree was issued on 4th November 2021.
 - f. The Applicant's advocates were served with the said decree and a judgement notice on 17th November 2021.
 - g. The Respondent filed a Notice to Show Cause against the Applicant to honour the monetary decree.
 - h. The Applicant has all along known about the decretal sum but has refused to pay and attend court to show cause why she should not be arrested and committed to civil jail.
 - i. The Applicant has been granted stay of execution of the warrant of arrest pending inter partes hearing on condition that she deposits half of the decretal sum within 21 days. The Respondent does not have intention of going against the court's order by executing before the lapse of the said order for stay of execution.
4. Both the parties made oral submissions on the application as follows;

The Applicant's Submissions

5. Mr. Mutonyi for the Applicant stated that the advocate's costs be borne as a liability of the estate. The state is worth Kshs.100,000,000 and therefore capable to pay the advocates. The Applicant is 70 years old and has been in and out of hospital. The estate cannot be administered in isolated pursuits because



that would be detrimental to the administrator. Counsel urged this court to dismiss the warrant of arrest given on 10th November 2023 for lack of merits.

Respondent's Submissions

6. Ms Waweru for the Respondent stated that there is a Judgement for the Bill of Costs and a Notice to Show Cause was served on the Applicant. The Applicant was given a conditional order to pay into court half of the decretal sum but refused to comply. The Applicant is not challenging the judgment and this is a monetary decree that must be paid. The fact that business is low and that the Applicant is very old cannot bar payment of the monetary decree. The Applicant was the instructing client and there was no agreement that the advocate's fees would be paid from the succession matter. Counsel urged the court to dismiss the application and allow the Respondent to execute the decree.
7. In a brief rejoinder the Applicant's advocate cited Section 63 of the *Law of Succession Act* reiterating that costs are the liability of the estate.

Issue For Determination

8. The only issue for determination is whether the application for setting aside the warrant of arrest has merit.

Analysis

9. This application seeks that the Warrant of Arrest issued on 1st November 2023 be set aside on the ground that the Applicant was not served with the Notice to Show Cause. The Applicant also stated that she cannot be personally liable for payment of advocate's fees because that is the liability of the estate. It is clear from the file that the Applicant is not truthful. She was properly served with the Notice to Show Cause and an affidavit of service dated 13th September 2023 was filed which she did not contest.
10. There is no dispute that the Respondent has a judgment and a decree against the Applicant and which judgment and decree have not been set aside. The Applicant does not dispute that it owes the Applicant an amount taxed in Court by the Deputy Registrar being the legal fees arising from advocate-client engagement.
11. In the case of *Innocent G. Ondiek v Julius Nakaya Kabole (2019) eKLR* it was held that:

“As stated above, the only viable ground of setting aside an order for committal to civil jail, is when the respondent challenges the mode or manner in which the said orders were obtained. The respondent herein states that he was not aware of the notice to show cause proceedings against him as he was not served with the notice...It is clear that the service herein has not been successfully challenged. The Deputy Registrar considered the affidavit of service, and found and held that the service was proper. It is my holding, therefore, that the service of the notice to show cause was proper and that the respondent has not offered any sufficient reason to warrant the setting aside of the orders made on the 3rd April 2019.”
12. In the case of *Fina Bank Ltd v Francis Gitau Komu T/A/ Bomas Motor Mart (2015) eKLR* it was held;-

“Accordingly, the Defendant was properly served with the Notices to Show Cause but of his own volition, or for reasons known to him, he decided to ignore and/or refuse to respond to the Notices, hence, warrants of arrest were issued. Warrants of arrest are permitted means of enforcing compliance with the Court order or executing a decree of the Court. See a work of the Court in the case of *Amri Singh Kalsi (suing as the administrator of the estate of Ram*



Singh Kalsi (deceased) v Bhupinder Singh Kalsi (supra) that: “that should not be construed to mean that warrants of arrest cannot be issued in a civil process. They are permitted in law to compel the obedience of Court orders including execution as long as the due process provided in the law is strictly observed.”

13. It is important to note that Court orders are not given in vain. In the exercise of court’s discretion to set aside Warrant of Arrest, courts seek to correct an inadvertence or mistake to avoid an injustice. In this case no such injustice has occurred because the Applicant was properly served with the Notice to Show Cause.
14. The court deliberately avoids the question of the estate being liable for the advocate’s fees because engaging in that question would entail this court sitting on appeal. The Applicant had all the opportunity of arguing on her liability and that of the estate when the Bill of Costs was taxed and at the time of the reference. The application on that question allegedly filed in the original succession cause cannot be ventilated in this application.

Findings And Determination

15. For the forgoing reasons this court finds the application to be devoid of merit and it is hereby dismissed with costs to the Respondent. The orders for stay of execution are hereby vacated. The Respondent at liberty to execute the decree.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 9TH DAY OF MAY, 2025.

A. MSHILA

JUDGE

In the presence of;

Julie – Court Assistant

Mutonyi for the Applicant

Waweru for the Respondent

