



REPUBLIC OF KENYA



In re Estate of Christopher Maina Kihumba (Deceased) (Family Miscellaneous Civil Case E006 of 2025) [2025] KEHC 5705 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5705 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS CIVIL CASE E006 OF 2025
FN MUCHEMI, J
MAY 8, 2025
IN THE MATTER OF THE ESATTE OF THE LATE
CHRISTOPHER MAINA KIHUMBA (DECEASED)**

RULING

Briefs Facts

1. The summons for determination is dated 27th February 2025 seeks for stay of proceedings, stay of taxation as well as the ruling to the Bill of Costs filed in Succession Cause No. E138 of 2021 and MC SUCC. Misc. No. E001 of 2022.
2. The application was unopposed.

The Applicant's Case

3. The applicant states that the court which the subject Advocate-Client Bill of Costs has no jurisdiction to entertain and make a ruling thereof. The applicant avers that on 10th December 2021, she filed MCSUCC No. E138 of 2021 at Ruiru Chief Magistrate's Court in respect of the deceased's estate through Messrs Solomon Mugo & Co. Advocates. The grant of letters of administration was issued on 21st December 2022.
4. The applicant avers that the said advocates ceased from acting for her and she appointed M/s Nduli & Co. Advocates who are currently on record for her in Appeal No. HCCA No. E305 of 2024 which is pending before the court.
5. The applicant further states that she filed the appeal challenging the ruling of Hon. John Were Chief Magistrate for awarding her daughters Kshs 50,000/- to be paid monthly.
6. The applicant states that the said M/s Solomon Mugo & Co. Advocates drew an advocate client bill of costs and presented it in court vide letter dated 28/1/2024. The applicant said she challenged the bill of costs it should not be taxed as filed in the lower court. the applicant argues that the lower court has no jurisdiction to tax an advocate's client bill of costs. Furthermore, if the lower court is allowed to tax the Bill of Costs as filed, it will pronounce itself on the date set for ruling on 6/3/2025.



7. The applicant avers that the said firm of advocates also filed another Bill of Costs in MCSUCCMISC. No. E001 of 2022 ad litem. The applicant is apprehensive that the said firm of advocates is intent that the two Bill of Costs be taxed together in one file despite the fact that they arise from two different files.
8. Parties canvassed the application by way of written submissions however the respondent elected not to file any written submissions.

The Applicant's Submissions

9. The applicant submits that there is no record in the lower court file that reflects that she ever appointed M/s Solomon Mugo & Co. Advocates to act for her in the ad litem application No. E001 of 2022. To applicant refers to the case of Civil Appeal No. 154 of 2014 *Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited*. It is further noted that the ad litem application has been drawn, filed and supporting affidavit sworn by Solomon Mugo & Co. Advocates in assuming that the advocates-clients Bill of Costs was properly filed before the lower court. The applicant submits that the Advocates-Client's Bill of Costs has been drawn as one instead of two different bill of costs yet they refer to two different files thus assuming two different set of services rendered. The applicant argues that the said application was dismissed for want of prosecution and inaction on the part of the firm of advocates and the record shows that counsel was reminded by the court on three occasions but never acted.
10. The applicant argues that no bill of costs is supposed to be filed in the lower court unless there is a taxing officer properly appointed by the Chief Justice. The court should have the costs assessed.
11. The applicant further argues that costs under the *Advocates Remuneration (Amendment) (Order) 2014* are payable under Schedule 10 be it party and party costs or advocates-client's bill of costs. The applicant refers to the case of Civil Appeal No. E101 of 2023 Kisumu High Court and submits that the lower court has no jurisdiction to tax the advocate client bill of costs as the provisions of paragraph 10 of the *Advocate's Act* does not support that proposition.

The Law

Whether the court has jurisdiction to determine the application.

12. The law on the question of jurisdiction was enunciated in the case of *Owners of the Motor Vessel "Lilian S" v Caltex Kenya Limited* [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
13. The application arises from an Advocate-Client Bill of Costs drawn in the Chief Magistrate's Court at Ruiru in succession Cause No. E138 of 2021. The said bill of costs has not yet been taxed. The applicant argues that the same would not be taxed as the lower court has no jurisdiction to tax a bill of costs.
14. Paragraph 11 of the *Advocates Remuneration Order* provides:-

Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.



The Taxing Officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen (14) days from the receipt of the reasons apply to a judge by Chamber Summons, which shall be served on all parties concerned, setting out the grounds of his objection.

15. As it stands the bill of costs has not been taxed and neither has the applicant filed a reference to trigger the jurisdiction of the court. Furthermore, the arguments the applicant raises can be canvassed in the lower court while objecting the bill of costs. Additionally, the applicant has not filed an appeal to warrant this court to examine the proceedings of the lower court to determine whether the magistrate court has the jurisdiction to tax the advocate-client bill of costs.
16. It is my finding that this court lacks jurisdiction to entertain this application and that the application is misconceived and incompetent.
17. Accordingly, the summons dated 27th February 2025 is struck out with no order as to costs.
18. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 8TH DAY OF MAY 2025.

F. MUCHEMI
JUDGE

