



**Waiyaki Way Developers Limited v Asega t/a NK Mugo & Co Advocates (Civil Case E262 of 2024) [2025] KEHC 12194 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12194 (KLR)

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

**CIVIL  
CIVIL CASE E262 OF 2024**

**TW CHERERE, J**

**MAY 15, 2025**

**BETWEEN**

**WAIYAKI WAY DEVELOPERS LIMITED ..... APPLICANT**

**AND**

**NORMAN KHAGAI ASEGA T/A NK MUGO & CO  
ADVOCATES ..... RESPONDENT**

**RULING**

**Respondent’s Notice of Motion Dated 23rd April, 2025**

“The court guards both the advocate’s right to remuneration and the client’s right to access justice —but neither right exists in a vacuum.”

1. The notice of motion dated 23<sup>rd</sup> April 2025 is brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules.
2. The Respondent seeks an order staying the proceedings commenced by the Originating Summons dated 04<sup>th</sup> December 2024 and subsequently amended on 18<sup>th</sup> March 2025, pending taxation of its bill of costs dated 22<sup>nd</sup> April 2025 filed in Milimani HCCC MISC E404 of 2025.
3. The application is premised on the Respondent’s contention that it has exercised a lien over the Applicant’s files due to non-payment of legal fees, and that it is apprehensive it may be prejudiced if compelled to release the files before its Bill is taxed. The Court is reminded of the well-known maxim, attributed to Abraham Lincoln, that “a lawyer’s time and advice are his stock in trade”—a sentiment that reflects the essence of the dispute, although the legal basis for asserting a lien remains subject to statutory and common law requirements.



4. The application is supported by the affidavit of Mr. Norman Khagai Asega, advocate sworn on 23<sup>rd</sup> April 2025. He deposes that the Applicant has, in good faith, been provided with all files in respect of which legal fees have been settled and instructions fully executed. He further avers that the Respondent is exercising its statutory and common law right of lien over the remaining files, owing to unpaid legal fees.
5. It is the Respondent's position that a Bill of Costs dated 22<sup>nd</sup> April 2025 has been filed and is pending taxation, as part of the Respondent's effort to recover the outstanding fees. The Respondent contends that unless the Court intervenes to preserve the lien, it risks being deprived of the opportunity to recover its dues and will suffer undue prejudice and financial loss if compelled to release the files prior to the conclusion of the taxation process.
6. The Applicant did not file any response but filed submissions dated 23<sup>rd</sup> April 2025 which address the issue of advocate's lien over client's files.
7. I have carefully considered the notice of motion dated 23<sup>rd</sup> April 2025 in light of the supporting affidavit and annexures thereto and the Applicant's submissions dated 23<sup>rd</sup> April 2025 and the only issue for determination is whether the Respondent has demonstrated a lawful basis for the stay of proceedings.
8. The principles applicable to the grant of stay of proceedings are well established. In *Global Tours & Travel Limited; Nairobi HC Winding Up Cause No. 43 of 2000, Ringera J.* (as he then was) expounded that the decision to grant a stay of proceedings is within the Court's discretion, which should be exercised based on the interest of justice to be exercised by balancing the potential benefits for the party seeking the stay with the potential harm to the opposing party, as well as the broader impact on the legal system's efficiency.
9. A similar principle was reaffirmed in *MRM aka RLM v SMRM (Civil Appeal 124 of 2022) [2024] KEHC 446 (KLR) (25 January 2024) (Ruling)*, where the Court stated that a stay of proceedings is a significant matter that should only be considered in the most deserving cases, as it affects the right to a speedy trial.
10. The affidavit evidence presented by the Respondent principally rests on the existence of a lien over the Applicant's files for unpaid fees.
11. In *John Karangai Nyamu & Another v Muu & Company Advocates [2019] eKLR*, the Court emphasized that:

“It is clear that an advocate's lien over a client's file only crystallizes upon the taxation of the bill of costs or where the fees are agreed and remain unpaid.”
12. The Respondent's bill of costs is yet to be taxed. Section 48 of the Act expressly prohibits the institution of proceedings for recovery of legal fees unless a bill of costs has been delivered and taxed, or there exists a valid agreement on fees. A lien, being an ancillary remedy to enforcement of payment, cannot be properly invoked in the absence of a taxed bill or such agreement.
13. Given that the Respondent's Bill of Costs is still pending taxation, the Respondent has not demonstrated any lawful basis upon which this Court should stay or defer determination of the applicant's claim for release of its files.
14. From the foregoing analysis, I find that the Notice of Motion dated 23<sup>rd</sup> April 2025 has no merit and it is dismissed with costs to the Applicant.



It is so ordered.

**DELIVERED AT NAIROBI THIS 15<sup>th</sup> DAY OF May 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Mr. Nyambala

For Applicants - Ms. Owuor for Tito & Associates Advocates

For Respondents - N/A for N.K.Mugo & Co. Advocates

