



**Kiarie v Mwaura (Civil Suit 535 of 2001) [2025] KEHC 11837 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11837 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL SUIT 535 OF 2001  
SN MUTUKU, J  
JUNE 17, 2025**

**BETWEEN**

**MICHAEL KIARIE ..... PLAINTIFF**

**AND**

**LAWRENCE MWAURA ..... DEFENDANT**

**RULING**

**Notic of Motion**

1. This Ruling relates to the Notice of Motion dated 4<sup>th</sup> September 2024 (the Motion) filed by Lawrence Mwaura (the Applicant). The Motion is anchored under Sections 1A, 1B and 3A of the [Civil Procedure Act](#) (CPA); Order 10 Rule 11; Order 11 Rule 3; and Order 51 Rule 1 of the Civil Procedure Rules (CPR). It seeks the following orders therein:
  - i. Spent.
  - ii. That the firm of B.M.W & Co. Advocates be and is hereby granted leave to come on record for the Respondent Applicant in place of the firm of Kiboi & Co. Advocates.
  - iii. Spent.
  - iv. Spent.
  - v. That the warrants of attachment dated 28.08.2024 issued by the court together with the Proclamation Notice issued by Gladsom Auctioneers be and are hereby set aside.
  - vi. That the judgment and all consequential orders be and are hereby set aside.
  - vii. That the pleadings filed by the unqualified person masquerading as Maina Nyangena & Co. Advocates be and are hereby expunged from the court record.
  - viii. That the costs of the application be borne by the unqualified person.



2. The Motion is supported by the grounds found on the face of it and in the Supporting Affidavit sworn by the Applicant on 4<sup>th</sup> September 2024. It is deposed that in execution of the decree issued in the present suit, Michael Kiarie (hereafter the Respondent) instructed Gladsom Auctioneers (the Auctioneers) to attach the Applicant's properties and assets, thereby resulting in issuance of the Warrants of Attachment dated 28<sup>th</sup> August 2024; that the application for issuance of the abovementioned warrants was made by a non-registered law firm namely the firm of Maina Nyangena & Co. Advocates, as confirmed by the Law Society of Kenya (LSK) through their letter dated 3<sup>rd</sup> September 2024, attached to the Supporting Affidavit and marked L.W-4; that the person named E.O. Nyangena who is purportedly acting for the Respondent herein, is an unqualified person and therefore not lawfully permitted to practice law as an advocate and as such, all documents filed by the said person ought to be expunged from the record and that unless the orders sought are granted, the Respondent will proceed with the execution process, to the detriment of the Applicant.
3. The Applicant has urged that the Motion be allowed as prayed.
4. The Respondent did not file any response to the instant Motion, notwithstanding the orders of this court (Mrima, J.) issued on 16<sup>th</sup> January 2025 directing the Respondent's advocate to put in a response within 14 days of the mentioned date. Further, the Respondent did not comply with the court's orders to file written submissions for purposes of disposing this Motion.

### Written Submissions

5. The Applicant filed submissions dated 16<sup>th</sup> April 2025. He has relied on the case of National Bank of Kenya Limited v Anaj Warehousing Limited [2015] KESC 4 (KLR) where the Supreme Court rendered itself thus:

“In our opinion, it is essential to establish the main objective of Section 34, as a basis for any conclusions. This Section prohibits unqualified persons from preparing certain documents. It is directed at “unqualified persons”. It prescribes clear sanctions against those who transgress the prohibition. The sanctions prescribed are both civil and criminal in nature...”
6. The Applicant has submitted that the present suit was filed by one E.O. Nyangena, purportedly an Advocate of the High Court of Kenya, when in truth the mentioned person is unqualified to practice law and is unrecognized as an advocate by LSK, under Section 9 of the *Advocates Act*. That in the circumstances, the abovementioned person neither had the authority to represent the Respondent nor to prepare and/or file the pleadings and documents on record, on behalf of the Respondent.
7. It is further submitted that there is no material on record confirming the registration of the law firm of Maina Nyangena & Co. Advocates under the Business Registration Act and hence, the said firm had no legal authority to act for the Respondent herein. That in the premises, all pleadings and documents filed by the said firm ought to be expunged from the record and that in view of all the foregoing circumstances, there is no doubt that no lawful or proper instructions were given to the Auctioneers for execution of the decree, since the said instructions derived from an incompetent and unqualified person.
8. The Applicant cited Section 8 of the *Auctioneers Act* in arguing that an auctioneer ought to act on instructions issued by a qualified and competent person. The Applicant has submitted that on those grounds, the instant Motion should be allowed as prayed, with costs to him pursuant to Section 27 of the CPA.



## Analysis and Determination

9. I have considered the Motion and the grounds in support thereof as well as the submissions of the Applicant. I have also read the court records in this file. I have noted that the Respondent lodged the present suit against the Applicant, by way of a Plaint dated 30<sup>th</sup> March 2001 seeking reliefs in the nature of general and special damages, arising out of a road traffic accident which occurred on or about 8<sup>th</sup> April 1998 and which resulted in bodily injuries to the Respondent. Upon the request of the Respondent, an interlocutory judgment was entered against the Applicant on 29<sup>th</sup> October 2002 for his failure to enter appearance and to file a statement of defence.
10. The matter proceeded for formal proof, resulting in delivery of the final judgment on 11<sup>th</sup> July 2003 in favour of the Respondent and against the Applicant, in the total sum of Kshs. 260,000/- plus costs and interest thereon.
11. The record shows that, subsequent to that judgment, the Applicant through his advocates, filed an application dated 4<sup>th</sup> December 2003 seeking to set aside the judgment and further seeking leave to defend the claim, which application was opposed by the Respondent. The court (Ang'awa, J, as she then was) declined to grant the orders sought and dismissed the application, vide a ruling delivered on 29<sup>th</sup> April 2005.
12. The record further shows that being aggrieved by the aforesaid ruling, the Applicant sought to challenge it by way of an appeal, before the Court of Appeal. It is apparent that the said appeal was struck out with costs. Consequently, the Respondent commenced execution proceedings against the Applicant, thereby triggering the instant Motion.
13. It is clear that the Applicant seeks four orders, among them an order granting leave for the firm of B.M.W & Co. Advocates to come on record for the Applicant in place of the firm of Kiboi & Co. Advocates. The relevant provision on this issue is Order 9 of the CPR, which provides that:  

Rule 9:  
When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

  - (a) upon an application with notice to all the parties; or
  - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.
14. Upon my perusal of the record, I have observed that initially, the Applicant was represented by the firm of Omboga & Co. Advocates at all material time; that the Applicant thereafter filed a notice of appointment of advocates dated 19<sup>th</sup> May 2005 appointing the firm of Kiboi & Co. Advocates to come on record alongside the abovementioned firm of Omboga & Co. Advocates.
15. The record, further, shows that notice of the instant Motion was given to the relevant parties to these proceedings. In the circumstances and in the absence of any contrary averments or evidence, the court is persuaded to allow, which I hereby do, the firm of B.M.W & Co. Advocates to come on record, as prayed.
16. The second, third and fourth orders of the Motion, relate:



- i. Whether the Respondent has been represented by a qualified person/firm of advocates in these proceedings;
  - ii. If so, whether the pleadings prepared by such person are competently before this court; and,
  - iii. Whether the judgment and consequential orders including the warrants of attachment emanating from the proceedings of this suit, ought to be set aside.
17. The three (3) orders are interrelated and therefore I will consider them together.
18. It is the contention of the Applicant that the person named, E.O. Nyangena, has all along been masquerading as an advocate and is not qualified to practice law or, and that the firm of Maina Nyangena & Co. Advocates is not recognized as a proper business or law firm; that consequently, any and all pleadings prepared by the aforesaid person and law firm are incompetent and ought to be expunged from the record and that the judgment, consequential orders and execution resulting therefrom are a nullity.
19. No responses were offered by or on behalf of the Respondent to counter the above assertions. The record of the court shows that on 16<sup>th</sup> January 2025 when this matter was before the court (Mrima, J), there was a Mr. Nyangena listed as appearing for the Plaintiff who is the Respondent in this Motion. Directions were issued by the court for parties for the Plaintiff/Respondent to file response within 14 days and Applicant to file Supplementary Affidavit is that became necessary; that parties were to file submissions in respect of this Motion. The matter was listed to confirm compliance on 4<sup>th</sup> March 2025. On that date, there was no representation for the Plaintiff/Respondent. On that date, time was extended to allow parties to comply and return to court on 29<sup>th</sup> April 2025 before me for purposes of highlighting the submissions.
20. 29<sup>th</sup> April 2025, the matter was placed before me. Mr. Wamuti appeared for the Applicant. There was no representation of the Plaintiff/Respondent. By this time the Applicant had filed submissions, thought late. The court allowed the submissions and granted the Respondent a further 14 days to file submissions. matter was listed for compliance on 13<sup>th</sup> May 2025 on which date the Respondent or his counsel were not present despite having been served with the mention notice. Given that no submissions had been filed by the Respondent and the failure of the Respondent to attend court, I fixed the matter for ruling.
21. From the court record, it is not in dispute that the Respondent was at all material times represented by the firm of Maina Nyangena & Co. Advocates from inception of the suit until present, with E.O. Nyangena appearing in court as advocate for the Respondent.
22. Section 2 of the [Advocates Act](#), Cap. 16 Laws of Kenya defines an ‘unqualified person’ as:
  - ...a person who is not qualified under section 9 and includes an advocate who—
  - (a) is not qualified under section 9;
  - (b) is not exempt under section 10; and
  - (c) fails to take out a practising certificate.
23. Section 9 of the [Advocates Act](#) sets out the requisite qualifications for one to practice as an advocate in Kenya.



24. Section 31 of the *Advocates Act* goes on to provide that an unqualified person should not act as an advocate, in the manner hereunder:

- (1) Subject to section 83, no unqualified person shall act as an advocate, or as such cause any summons or other process to issue, or institute, carry on or defend any suit or other proceedings in the name of any other person in any court of civil or criminal jurisdiction.
- (2) Any person who contravenes subsection (1) shall—
  - (a) be deemed to be in contempt of the court in which he so acts or in which the suit or matter in relation to which he so acts is brought or taken, and may be punished accordingly; and
  - (b) be incapable of maintaining any suit for any costs in respect of anything done by him in the course of so acting; and
  - (c) in addition be guilty of an offence.

25. Further, Section 34 states that:

No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument—

...

- (f) relating to any other legal proceedings;  
nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instruction or for the drawing or preparation of any such document or instrument:

...

- (2) Any money received by an unqualified person in contravention of this section may be recovered by the person by whom the same was paid as a civil debt recoverable summarily.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence.

26. My understanding of the foregoing provisions, particularly, Sections 31 and 34, above, is that no unqualified person is allowed to play the role of an advocate in any legal proceedings or to take instructions or draft any of the documents or instruments set out thereunder.

27. In further illuminating the legal position on the above subject, I am guided by the case of *National Bank of Kenya Limited v Anaj Warehousing Limited* [2015] KESC 4 (KLR) wherein the Supreme Court elaborated on the objective of Section 34 (*supra*) in the following manner:

“In our opinion, it is essential to establish the main objective of Section 34, as a basis for any conclusions. This Section prohibits unqualified persons from preparing certain documents. It is directed at “unqualified persons”. It prescribes clear sanctions against those who transgress the prohibition. The sanctions prescribed are both civil and criminal in nature...



The facts of this case, and its clear merits, lead us to a finding and the proper direction in law, that, no instrument or document of conveyance becomes invalid under Section 34(1)(a) of the *Advocates Act*, only by dint of its having been prepared by an advocate who at the time was not holding a current practising certificate. The contrary effect is that documents prepared by other categories of unqualified persons, such as non-advocates, or advocates whose names have been struck off the roll of advocates, shall be void for all purposes.”

28. I draw further guidance from the Court of Appeal’s decision in Peterson Ndung’u, Stephen Gichanga Gituro, N. Ojwang, Peter Kariuki, Joseph M. Kyavi & James Kimani v Kenya Power & Lighting Company Ltd [2018] KECA 638 (KLR) where the reasoning by the Supreme Court in the earlier cited case, was restated.
29. Flowing from the foregoing, the standing legal principle is that any and all documents and instruments prepared by unqualified persons who are either non-advocates or advocates whose names have been struck out of the Roll of Advocates, shall be automatically rendered null and void.
30. Separately and on the subject of registration, it is a legal requirement for businesses such as law firms operating in Kenya, to be registered. In respect of this Motion, it is noteworthy from the record that the Applicant has annexed to the instant Motion, copy of a letter dated 3<sup>rd</sup> September 2024 addressed to his advocates by the Law Society of Kenya (LSK) (Annexure “LW-4”), the contents of which are that the LSK does not have any person registered as an advocate and using the name ‘E.O. Nyangena’ or practising in the name and style of ‘Maina Nyangena & Co. Advocates.’
31. The record does not bear any evidence to the contrary, nor is the letter from the Law Society of Kenya contested. Moreover, the registration details, if any, pertaining to the law firm of Maina Nyangena, have not been disclosed. There is therefore no way of ascertaining when, if at all, the said law firm was registered and who constitute its legal partners or proprietors. A Mr. Nyangena, or a person introducing himself as such, has been attending court. There was no contest that that firm was not served with this current Motion. In fact, both parties were presented before the court (Mrima, J) when directions on the current Motion were issued. They were aware that such a letter existed because the Respondent had been served with the Motion.
32. In the absence of any contrary material and upon being guided by various statutory provisions cited hereinabove as well as the authority by the Supreme Court in the case of National Bank of Kenya Limited v Anaj Warehousing Limited on the consequences of documents prepared by unqualified persons, I am satisfied that the Applicant has tendered credible material to support the averments that E.O. Nyangena is an unqualified person under the *Advocates Act*, and could not therefore have lawfully practiced and operated in the name and style of Maina Nyangena & Co. Advocates.
33. Consequently, the court finds that any and all pleadings and documents prepared by the said person and/or firm of advocates, are null and void, and ought to be expunged from the record. It therefore follows that the suit proceedings, the resulting judgment and the warrants of attachment taken out on the basis of instructions given by an unqualified person in execution, cannot be sustained, the same having been based on a nullity. The same ought to be set aside in their entirety.
34. Consequently, having already granted prayer 2 of the Motion, I hereby grant prayers 5, 6, and 7 of the Notice of Motion dated 4<sup>th</sup> September 2024 as prayed and award costs to the Defendant/Applicant to be borne personally by both Mr. Stephen Ng’ang’a and Mr. E.O Nyangena..
35. Orders shall issue accordingly.



**DATED, SIGNED AND DELIVERED THIS 17<sup>TH</sup> JUNE 2025.**

**S. N. MUTUKU**

**JUDGE**

In the presence of:

Mr. Wamuti for the Applicant/Judgment Debtor

