



**Mwaura Kelvin Karuga & Associates Advocates v Kuria (Miscellaneous Civil Application E413 of 2025) [2025] KEHC 11943 (KLR) (Civ) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11943 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E413 OF 2025**

**SN MUTUKU, J**

**JUNE 19, 2025**

**BETWEEN**

**MWAURA KELVIN KARUGA & ASSOCIATES ADVOCATES ..... APPLICANT**

**AND**

**GEOFFREY KIARIE KURIA ..... RESPONDENT**

**RULING**

1. This Ruling is informed by an oral application made by Mr. Mwaura, who is the applicant in this matter, asking for costs in the sum of Kshs 30,000. He justified that request by submitting that he has faced challenges in seeking to be heard in the first application, the Notice of Motion dated 26<sup>th</sup> March 2025 which necessitated him to file the second application, the Notice of Motion dated 8<sup>th</sup> May 2025. He claimed that the Respondent has been frustrating him with execution necessitating the filing of the second application. He submitted that the costs sought are a fair and honest remuneration for the work done and that costs follow the event.
2. The application was opposed by Mr. Kung'u appearing for the Respondent. Mr. Kung'u argued that the only terms of the consent recorded on 19<sup>th</sup> May 2025 were for settlement of the taxed costs of Kshs 124,675 in three instalments beginning on 21<sup>st</sup> May 2025 and terminating on 11<sup>th</sup> June 2025; that payment was done in full within the time allocated, with the last instalment being paid on 29<sup>th</sup> May 2025; that if there were other terms of that consent, this ought to have been captured and that it would be unfair and unjust to introduce other terms of the consent.
3. I have considered this issue. The record of the court file shows that this file was placed before me on the 8<sup>th</sup> April 2025. I fixed the Notice of Motion dated 26<sup>th</sup> March 2025 for hearing on 19<sup>th</sup> May 2025. Before the matter could be heard on that date, the Applicant filed, by Certificate of Urgency, a second application, the Notice of Motion, dated 8<sup>th</sup> May 2025. I gave directions that the same application be



served and that the matter had a hearing date already fixed for 19<sup>th</sup> May 2025. The latter application was given the same date for directions.

4. On 19<sup>th</sup> May 2025, Mr. Mwaura notified the court that the parties wished to record a consent which was confirmed by Mr. Kung'u for the Respondent. The court recorded the consent to the effect that the taxed costs of Kshs 124,675 was to be settled by the Respondent in three instalments of Kshs 41,560 on 21<sup>st</sup> May 2025, 4<sup>th</sup> June 2025 and 11<sup>th</sup> June 2025 through Mpesa to mobile number 0797117169 belonging to the Applicant. The court adopted that consent as the order of the court and fixed the matter for mention on 16<sup>th</sup> June 2025 to confirm compliance.
5. There was no other issue pending in the matter save an issue touching on HCCR Misc. E328/2023 which Mr. Kung'u sought to be consolidated with this file, which application I declined to grant.
6. Mr. Mwaura was aware he had two pending applications: Notice of Motion dated 26<sup>th</sup> March 2025 and 8<sup>th</sup> May 2025. Both are similar applications. The Notice of Motion dated 26<sup>th</sup> March 2025 sought adoption of the Certificate of Taxation dated 20<sup>th</sup> March 2025 in the sum of Kshs 124,675 as a judgment of this court and costs. As shown above, this application had been slotted for hearing on 19<sup>th</sup> May 2025. However, before that date arrived, a second application was filed, the Notice of Motion dated 8<sup>th</sup> May 2025. Prayer two (2) of that application is a replica of prayer one (1) of the earlier application dated 26<sup>th</sup> March 2025.
7. My reading of the two applications show that the only difference between them is prayer three (3) of the second application that seeks an alternative prayer to order the Respondent to file and serve a Replying Affidavit to both applications. I must state that the second application and the alternative prayer in it was unnecessary given that the court was yet to engage the parties to find out if the application was opposed or not.
8. I have considered the issue raised by Mr. Mwaura that he is seeking costs in the sum of Kshs 30,000 because of the two applications he had filed, although he stated that the amount of costs sought is for one application only. This request, in my view, is not justified. Mr. Mwaura was aware that he had filed two applications at the time he negotiated and agreed with Mr. Kung'u to record the consent dated 19<sup>th</sup> May 2025. Indeed, that consent settled this matter save for the parties returning to court on 16<sup>th</sup> June 2025 to confirm that the consent order was complied with. Mr. Mwaura, during the recording of the consent, did not indicate that he would wish to address the court on a matter outside that consent. In my considered view, with respect to both counsel, I think Mr. Mwaura's application for costs outside the consent order, given that all facts were within his knowledge when he entered into that consent, is an afterthought.
9. In my view, Mr. Mwaura was aware, at the time of recording a consent with Mr. Kung'u, that he had filed two applications. He ought, at that time or earlier, to have raised the issue of costs. In my view, Mr. Mwaura has not demonstrated sufficient reasons why he is seeking costs, given the history of the two applications, the second application, which in my view was not justified. Consequently, I decline to grant the costs sought. The compliance with the consent order by paying all the instalments agreed upon makes this matter fully settled. I have no reason to keep this file open and I hereby order that this file be closed.
10. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> JUNE 2025.**

**S. N. MUTUKU**

**JUDGE**

