



REPUBLIC OF KENYA



**Joseph Kiarie and Company Advocates v Mwenda (Miscellaneous Application E044 of 2024)  
[2025] KEHC 10815 (KLR) (Anti-Corruption and Economic Crimes) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10815 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
MISCELLANEOUS APPLICATION E044 OF 2024**

**LM NJUGUNA, J**

**JULY 23, 2025**

**BETWEEN**

**JOSEPH KIARIE AND COMPANY ADVOCATES ..... APPLICANT**

**AND**

**ANN KANANU MWENDA ..... RESPONDENT**

**RULING**

1. Before the court is the application dated the 2<sup>nd</sup> October, 2024 brought under Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 2 Rule 15, Order 50 Rule 1 of the *Civil Procedure Rules*. It is premised on the grounds set out on the body of the same and its supported by the annexed affidavit sworn by Ann Kananu Mwenda (the applicant for purposes of this application), on even date and it seeks the following Orders;
  - 1) This Honourable Court be pleased to strike out the Applicant's Bill of costs dated 28th August 2024.
  - 2) The Honourable Court be pleased to issue any other order it may deem fit.
  - 3) Costs of this Application be provided for.
2. The applicant avers that, on the 6<sup>th</sup> January, 2020, she was nominated as the Deputy Governor, Nairobi City County and following the nomination, a Petition was filed by Peter Odhiambo being HCACEPET 1 OF 2020 which was challenging her nomination in that capacity.
3. That the Petition did not touch on her personal issue but those of the appointment/nomination in official capacity, to the Nairobi County and the public at large. That by dint of Section 133 of the County Government Act, the applicant cannot be held personally liable for any Civil liability that



arises from execution of any act, matter or thing done or omitted to be done by any person acting under the direction and/or instructions of the County Government.

4. The applicant further avers that the respondent/advocate was appointed by the Nairobi City County Public Service Board as the legal advisor reporting directly to the Governor for the day to day allocation of duties and responsibilities, which appointment was subject to the discretion and pleasure of the Governor during her term in office.
5. That as a legal adviser, the respondent/advocate was expected to offer legal advice and counsel to the County Government and its officials including the applicant/client and in return, he was entitled to a monthly consolidated salary of Ksh. 187, 430.
6. The applicant depones that the respondent who was a sole proprietor practicing in the name of Joseph Kiarie and Company Advocates, there is no distinction between himself and his firm of advocates. That the respondent represented the applicant and she paid his dues during his employment with the Nairobi City County Public Service Board and is therefore not entitled to claim any other or further fees and/or dues from Nairobi City County Public Service Board and/or the applicant.
7. Therefore, the Bill of Costs as drawn against the applicant is vexatious, an abuse of the court process, scandalous, ill founded, frivolous and may embarrass the Honourable court. That the applicant will suffer substantial loss, financially and psychologically unless this Honourable court issues the Orders sought herein.
8. That it is an abuse of the court process and a waste of judicial time to tax the Bill of Costs as drawn, and against a party who cannot be held personally liable for any civil liability that arises from execution of any act, matter or thing done, or instructions of the County Government.
9. The respondent opposed the application vide a replying affidavit sworn on the 14<sup>th</sup> October, 2024. He states that he is a practicing advocate as an individual and in addition, he manages a law firm in the name of Joseph Kiarie and company Advocates which is a sole proprietorship and the firm and himself are two distinct entities independent from one another and therefore, they cannot be treated as one.
10. He contended that the appointment by the County Government was for him personally as an individual and not the firm and in carrying out his duties, he did so as an individual and not the firm. He further stated that the instructions to enter appearance and prosecute and/or defend all the matters filed in the main suit as Anti –Corruption and Economic Crimes Petition No. 1 of 2020 came directly from the applicant herself and not the County Attorney or Solicitor or the Governor.
11. That, by that time, the applicant was not a Governor or a Deputy Governor and the instructions were given to the firm and the respondent had not been appointed the legal advisor by then. Further, that it is the applicant personally who gave the instructions to the respondent when the cases were first filed in court in 2020 and that during the respondent’s tenor as the legal advisor to the Governor, his firm of Advocates was not in the Nairobi County Government Legal Panel and therefore, could not take up matters on behalf of the Governor.
12. That in any event, the law firm being a business and a going concern could not be shut down just because of his appointment as a legal Advisor to the Governor as it had its own Advocates and other employees who tirelessly worked on all the applicant’s matters and deserve to be paid for the work they did. That the applicant’s application is only meant to evade or avoid payment for the work done by the law firm from the High court, Court of Appeal and to the Supreme Court. He avers that the application is therefore devoid of merits, misconceived, vexatious, and unfounded and the same should be dismissed.



13. The applicant filed a further affidavit but it contains the same contents as the supporting affidavit and it would serve no purpose for this court to reproduce it here.
14. The application was disposed of by way of written submissions and both parties complied with the directions on filing of the same.
15. The applicant identified one issue for submissions to wit:-

**a) Whether the applicant was represented in her official capacity.**

16. In regard to this issue, it was submitted that she was nominated as the Deputy Governor on the 6<sup>th</sup> January, 2020 and on the 13<sup>th</sup> January, 2020, one Peter Agoro filed Petition 1 of 2020 challenging her nomination as the Deputy Governor of Nairobi County. That the respondent represented her in the said Petition and has filed a Bill of Costs dated the 28<sup>th</sup> August, 2024 seeking costs for the said representation.
17. The applicant relied on Section 133 of the *County Governments Act* and submitted that she was a member of the County Executive Committee and also the Deputy Chief executive of the county and as such, she should be afforded protection under Section 133 aforesaid. That by dint of that provision, the Governor and the Deputy Governor have no Civil liability in relation to acts or omissions done by virtue of their offices that they hold.
18. That the applicant was nominated as the Deputy Governor on the 6<sup>th</sup> January, 2020 and after the said nomination, she became the Deputy Governor Nominee and held the said office in that capacity, and subsequently, she became the Deputy Governor and later the Governor of Nairobi County.
19. The applicant averred that from the 6<sup>th</sup> January, 2020 after her Nomination, no act or matter or thing done or omitted to be done by her in her official capacity as the Deputy Governor Nominee and later as the Governor would render her liable for any Civil liability including legal fees in Petition 1 of 2020 as it related to her official capacity and she cannot be held personally liable for the same.

**Whether the advocate is entitled to the fees sought.**

20. On this issue, it was submitted that the respondent was appointed by the Nairobi City County Public Service Board as the legal advisor reporting to the Governor for the day today allocation of duties and responsibilities. That in addition, the appointment to the said position was subject to the discretion and pleasure of the Governor, during their term in office and as a legal advisor, he was expected to offer legal advice and counsel to Nairobi County Government and its officials including the applicant at a monthly consolidated salary of Ksh. 187,430.
21. That during his employment with Nairobi City County Public Service Board, the respondent represented the applicant in the Petition from which the Bill of costs arises, using his law firm. That he was paid his monthly dues and/or legal fees from the Nairobi City County Public Service Board.

**Whether the Bill of costs dated the 28<sup>th</sup> August, 2024 should be struck out**

22. It was submitted that the Bill of costs was drawn as against the applicant instead of Nairobi County Government and she should not be held personally liable, for the reasons that have been stated hereinabove, and given that the Petition was filed to represent the interest of Nairobi County Government and the public at large. That it is an abuse of the court process and a waste of judicial time to tax the Bill of costs as drawn and against a party who cannot be held personally liable.
23. On his part, the respondent identified two issues as hereunder;



- a. Whether there existed an advocate – Client relationship between the client/Applicant and Advocate/respondent.
  - b. Who should bear the costs?
24. The respondent submitted that the applicant issued instructions to him to represent her in Petition 1 of 2020 in her personal capacity, contrary to the contention that the same were issued in her official capacity. He contends that having been issued with the instructions and duly appointed to act and subsequently filing a Notice of Appointment, there existed a retainer relationship as per Section 51(2) of the Advocate's Act Cap 16 Laws of Kenya. As such, the respondent is entitled to legal fees and to be protected by the Provisions of the law under the Advocate's Act and the Advocates' Remuneration Order. Reliance was placed on the case of Wilfred Komosi T/A Komosi & company advocates v Flamco Limited (2017) and that of Omulele Tollo & Tollo Advocates v Magnum Properties Limited (2016) eKLR
  25. It was further submitted that when the applicant instructed him to represent her in the said Petition, she was just a Nominee and had not assumed her official duties as the Deputy Governor, which if the latter had ensued could have rendered her a member of executive committee of Nairobi County Government as hence she could be afforded protection under Section 133 of the County Government Act.
  26. The respondent contended that there is no evidence on record indicating that the instructions to act were issued by the County Attorney or County Solicitor to represent the nominee, the applicant herein and therefore, the applicant issued instructions in her personal capacity. That the respondent was appointed as a legal advisor much later after the instructions for legal representation in Petition 1 of 2020 were issued to the firm and the subject matter of the Bill of costs in question was filed and heard before the said appointment.
  27. He contends that he is entitled to the taxed amount awarded in the ruling delivered on the 24<sup>th</sup> January, 2025. He has termed the application dated the 2<sup>nd</sup> October, 2024 as vexatious and has been brought in bad faith, and its evidently aimed at delaying justice to the respondent by robbing him off his well-deserved entitlement or dues to them for the legal services that they offered. Reliance was placed on the case of First American Bank of Kenya Limited v Shah & others (2002) eKLR and that of KANU National Elections Board & 2 others v Salah Yakub Farah (2018) eKLR.
  28. On the issue of costs, it was submitted that the same is awarded at the discretion of the court and the cases of DGM v EWG (2021) and that of Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others (2013) eKLR were relied on.

### **Analysis and Determination**

29. This court has considered the application and the supporting affidavit, the replying and the further affidavits together with the submissions filed by the respective parties. There are two issues for determination ;
  - a. Whether there existed an advocate- client relationship between the applicant and the respondent and if so, whether the applicant was represented in her personal or official capacity.
  - b. Should the court find that the respondent represented the applicant in her official capacity, whether he is entitled to legal fees when Joseph Kiarie Advocate had been retained as the legal advisor to the Governor and the County Government.
30. I will proceed and determine the two issues together as they are both joined at the hip. The applicant herein was on the 6<sup>th</sup> January, 2020 nominated as the Deputy Governor of Nairobi County and



following the nomination, a Petitioner namely Peter Odhiambo Agoro filed Petition number 1 of 2020 challenging the said nomination.

31. The respondent herein represented the applicant in the said Petition and that fact has not been denied by the applicant. However, whereas the applicant avers that she was represented in her official and not her personal capacity, the respondent holds a different view and that is the elephant in the room in this application. Should the court find that the respondent acted for the applicant in her official capacity, the court will also determine if the respondent is entitled to legal fees when Joseph Kiarie has been employed by the County Government as its legal advisor.
32. The respondent contends that the applicant issued the instructions to him in her personal capacity the reason being that at the time the Petition was filed, the applicant was just a nominee whose appointment was challenged through the said Petition. The applicant later became the acting Deputy Governor on the 15<sup>th</sup> January, 2021 when she assumed office.
33. On the 15<sup>th</sup> March, 2021 Joseph Njenga Kiarie was appointed by the Nairobi City County Public Service Board as the legal advisor reporting directly to the Governor for the day to day allocation of duties and responsibilities and he was expected to offer legal advice and counsel to the county Government and its officials including the applicant herein and he was entitled to a monthly consolidated salary of Ksh. 187, 430.
34. The appointment letter is annexed to the applicant's replying affidavit and in brief, it has set out the terms and conditions of service and engagement between the respondent and the County Public Service Board. From the wording of the same, it is a contractual engagement which could be terminated by either of them by giving a one month's notice in writing or payment of one month's salary in lieu of notice, but the County Government reserves the right to terminate the services summarily for a lawful cause.
35. The applicant was to work on an eight-hour schedule spread over five days working week which could be changed from time to time by the applicant depending on the work schedules and office requirements. The agreement is silent on whether he would only act as a legal advisor or he could also represent the County Government in matters in court. This court has also noted that the agreement is not clear as to whether he was to close his firm of advocates while he was engaged by the County Government.
36. According to the respondent, his law firm continued to run with full members of staff and an advocate and it is in that capacity that he offered services to the applicant at a fee. It has not been denied that the applicant engaged the respondent when she was a nominee and even after her confirmation the respondent's law firm continued acting for her.
37. That being the case, when the applicant assumed office, it was expected that the County Government would give instructions to the firm of Joseph Kiarie to continue acting in the matter if indeed the County Government had taken over the conduct of the matter. There is nothing on record by way of an instruction note from the County Government to confirm the applicant's assertion that the respondent continued to act for her under instructions from the County Government.
38. My reading and understanding of Section 133 is that the same relates to civil liability but does not extend to legal fees and representation especially where there is no evidence of retainer by the County Government.
39. In my view, instructions to a counsel by a client ought to be in writing and especially in a case like this one where one is dealing with a Public body and for accountability. In the absence of any evidence of



such instructions, I am prepared to find and I do hereby do, that the applicant is liable to pay any legal fees that may be found due to the respondent after taxation of the Bill of costs.

40. In the end, I find that the application has no merits and it is hereby dismissed with costs to the respondent. The matter is hereby remitted back for taxation of the Bill of costs dated the 28<sup>th</sup> August, 2024, to be taxed by a different taxing Master other than Hon. Gaithuma.

41. It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 23<sup>RD</sup> DAY OF JULY, 2025**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of:-

Miss Mwangi holding brief for Mr. Kiarie for the Applicant

Miss Gathira holding brief for Mr. Kamotho for the Client.

Court assistant – Adan

