



Koske t/a EK Koskei & Company Advocates v Mugo (Miscellaneous Civil Application 316 of 2023) [2025] KEHC 11623 (KLR) (28 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION 316 OF 2023**

JM NANG'EA, J

JULY 28, 2025

BETWEEN

**EMMANUEL KIRUI KOSKE T/A EK KOSKEI & COMPANY
ADVOCATES PLAINTIFF**

AND

JOSEPH KIARIE MUGO DEFENDANT

RULING

1. By this Notice of Motion application dated 20th December, 2023 the Applicant prays for these orders;-
 1. That this court be pleased to strike out the Bill of Costs dated 6th September 2023.
 2. That the Advocate/Applicant be ordered to show cause why he should not pay the party and party costs incurred in MCEP E001 of 2022.
 3. That costs of this application be provided for (sic).
2. This Application is brought by Joseph Kiarie Mugo (“the Applicant”) who was the Petitioner in the Chief Magistrate’s Court’s Nakuru Election Petition No. 1 of 2022, against his advocate in the Petition, Emmanuel Kirui Koskei T/A E.K. Koskei & Co. Advocates (“the Respondent).
3. The Applicant avers that the Respondent filed the said Bill of Costs dated 6th September 2023 Advocate/Client to recover legal costs he incurred in the said Election Petition in which he was the Applicant’s Legal Counsel. Upon advice of his current advocate, the Applicant contends that his petition was struck out in limine on the ground of incompetence on account of being brought pursuant to non-existent constitutional and statutory provisions. Consequently, he filed Nakuru Chief Magistrate’s Civil Case Number E936 of 2023 against the Respondent for professional negligence and obtained judgement in his favour being general damages of Kshs. 600,000/= and special damages of Kshs. 280,000/=.



4. Based on legal advice, the Applicant avers that the Respondent cannot in law benefit from his fortitious act in the form of legal fees or at all. On the Contrary, the Applicant contends that it is the Respondent who is indebted to him for his negligent professional conduct, citing the provisions of Rule 61 of the Advocates Remuneration Rules.
5. For the stated reasons *inter alia* the Applicant wants the Respondent to shoulder the cost of the Election Petition. The Respondent's Bill of Costs dated 6th September 2023 is therefore attacked as frivolous, vexatious and an abuse of the court process.
6. The Respondent opposes the Application vide his affidavit in reply sworn on 31st October 2024. While confirming that he represented the Applicant in the Election Petition and that the latter obtained judgement against him for professional negligence in relation to conduct of the petition, the Respondent professional indemnity (Madison Insurance Company Limited) for failing to instruct an advocate to defend him in the suit. The Respondent nevertheless avers that that the professional negligence suit No. E936 of 2023 (Nakuru) cannot be used as "a red herring" to avoid payment of legal fees due to him since the outcome of the Election Petition "was speculative and the same could have been lost on account of other issues."
7. The Respondent therefore asserts that he is entitled to his legal fees regardless of the professional negligence judgement against him and the fate of the Election Petition. He deposes that he is not guilty of gross negligence or any offence warranting disciplinary action.
8. Learned Counsel for the parties filed written submissions which I have perused in relation to the application and the rival affidavit evidence.

Applicant's Written Submissions

9. As follows;

Rule 61 *Advocates (Remuneration) (Amendment) Orders, 2014*

"Where it appears that by reason of any misconduct or default of the advocate, any costs properly incurred have proved fruitless to the party on whose behalf the same were incurred the court or judge may call on the advocate by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the advocate and his client."

10. As the Advocate caused the client to lose the petition by professional negligence, he cannot recover Advocate/Client costs.

Respondent's Written Submissions

11. No jurisdiction since court is seized of an application for Taxation of Costs [No appeal or reference to court] *Owners of Motor Vessel L'Ilia's*
 Delay to bring application inordinate/unexplained
 Paragraph 10 of *Advocates Remuneration Order* Deputy Registrar to tax or assess fees.
12. Paragraph 11(1) – any objection to Deputy Registration decision to the High Court by reference. *Sharma vs Uburu Highway Development Limited* (2001) 2 EA Taxation & stay be determined by the Deputy Registrar.
13. Balance of the case for striking our put before the judge.



Willis O. Nyende & Co. Advocates vs Kariuki & Gatheca Reasures Ltd. (Misc. Constitution No. 377 of 2007) Macharia & Co. Advocates vs Magugu (2002) 2 EA 32.

14. The issue arising for determination therefore is whether this court has jurisdiction to determine the application to strike out the Advocate/Client Bill of Costs dated 6th September 2023.
15. The records show that when the matter was mentioned before the Deputy Registrar on 10/12/2024 the Respondent's Advocate suggested that the application be referred to this court owing to what Counsel described as "jurisdiction issues". The Applicant's Advocate was however, of the opinion that the Deputy Registrar as the Taxing Officer has the necessary jurisdiction to tax the Bill of Costs and also determine the application to strike it out.
16. The Deputy Registrar then referred the matter to this court for directions.
17. On the authorities cited by the Respondent. I agree that this court is bereft of jurisdiction to entertain this application to strike out the Bill of Costs in issue. The Deputy Registrar of this court exercises special jurisdiction under Paragraphh 10 of the Advocates (Remuneration) (Amendment) Order, 2014 to tax Parties' Bill of Costs including an Advocate/Client Bill of Costs such as filed herein. This power extends to striking out the Bill or staying taxation thereof if found appropriate.
18. This court only assumes jurisdiction in the event of a Reference made to it pursuant to the Advocates Act and the Advocates (Remuneration) (Amendment) Order, 2014, made thereunder. The court may also hear and determine an appeal that may arise from orders issued by the Deputy Registrar. In the first instance, however, the Deputy Registrar has exclusive jurisdiction to dispose of an application for Taxation of Bill of Costs.
19. In the result, I find and hold that this court has no jurisdiction to hear and determine the application dated 6th September 2023 seeking the remedy of striking out. Let the application be canvassed before the Deputy Registrar of the court.
20. It is directed accordingly.

J. M. NANG'EA, JUDGE.

Ruling delivered this 28th day of July, 2025 in the presence of:

Applicant's Advocate, Absent

Respondent's Advocate, Mr. Kipng'eno

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

