



Swaleh, Mwangi & Company Advocates v Maina & 2 others (Miscellaneous Application 61 of 2017) [2025] KEHC 9581 (KLR) (Family) (4 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION 61 OF 2017
H NAMISI, J
JULY 4, 2025**

BETWEEN

SWALEH, MWANGI & COMPANY ADVOCATES APPLICANT

AND

JOHN KAGUMA MAINA 1ST RESPONDENT

STANLEY KARIUKI MAINA 2ND RESPONDENT

CHARLES KANYUGA MAINA 3RD RESPONDENT

RULING

1. The Applicant's Notice of Motion dated 24 January 2024 seeks the following orders:
 - i. That Judgment for the sum of Kshs 23,010,220.52 plus accrued interest thereon at 14% p.a from 19 December 2019 until payment in full be entered in favor of the Applicant/Advocate as against the 1st and 3rd Respondents/Clients jointly and severally;
 - ii. That the costs of this Application be provided for.
2. The Application is supported by the Affidavit of Mwangi Gathuri, Advocate. The Advocate/Client Bill of Costs dated 24 April 2017 was taxed in the sum of Kshs 23,010,220.52 and a Certificate of Taxation dated 24 January 2024 subsequently issued. No appeal has been filed against the said Certificate.
3. The Respondents filed a Replying Affidavit opposing the Application. The Respondents aver that there is an Application dated 5 April 2022 which is pending before the Court. The said Application seeks to have the Respondents' application for reference dated 5 March 2020 struck out for want of



prosecution. It is the Respondents' contention that the orders sought herein are yet to crystalize in view of the pending application.

4. Though parties were directed to file submissions, only the Applicant filed. I have keenly read the said submissions.
5. I also note from the Court record that the Application dated 5 April 2022 was allowed on 2 May 2023, and the following orders issued:
 - a. The Application dated 11 March 2020 is hereby dismissed for want of prosecution;
 - b. The 1st and 3rd Respondents to comply with the Ruling of this Court dated 19 December 2019;
 - c. Costs of this Application be borne by the Respondents.
6. That being the case, the basis of the Respondent's opposing the present application is inconsequential.
7. In the case of *Musyoka & Wambua Advocates v Rustam Hira Advocate (2006) eKLR* it was held thus:

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....”
8. Having read the Application, Affidavits as well as the attached documents, I am of the considered view that the same is merited. The Application is allowed and I make the following orders:
 - i. Judgement is hereby entered for the Applicant against the 1st and 3rd Respondents, jointly and severally, in terms of the Certificate of Costs dated 24 January 2024 for Kshs 23,010,220.52.
 - ii. Interest thereon is awarded at the rate of 14% per annum from 19 December 2019 until payment in full.
 - iii. The Applicant is awarded costs assessed at Kshs 30,000/=.

DATED AND DELIVERED AT NAIROBI THIS 4 DAY OF JULY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicant: Mr. Mwangi Gathuri

For Respondents: Mr. Mbakaya

Libertine Achieng..... Court Assistant

