



**Titus Mkahanu & Associates Advocates v Kenya Medical  
Supplies Authority (Miscellaneous Application E195 of 2024)  
[2025] KEHC 11050 (KLR) (Commercial and Tax) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11050 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E195 OF 2024  
FG MUGAMBI, J  
JULY 25, 2025**

**BETWEEN**

**TITUS MKAHANU & ASSOCIATES ADVOCATES ..... ADVOCATE**

**AND**

**KENYA MEDICAL SUPPLIES AUTHORITY ..... CLIENT**

**RULING**

**Introduction and Background**

1. This Ruling determines two Notices of Preliminary Objection. The first is the Notice dated 15<sup>th</sup> July 2025, filed by the advocate, which challenges the propriety of the firm of Nyaanga & Mugisha Advocates coming on record without leave of Court. It is contended that the firm filed an application dated 11<sup>th</sup> June 2024 seeking leave to come on record but did not serve it on the previous advocates on record for the client, and consequently, all documents filed by the said firm ought to be struck out.
2. The second is the Notice dated 20<sup>th</sup> June 2024, filed by Nyaanga & Mugisha Advocates on behalf of the client. It objects to the competency of the substantive application by the advocate on the grounds that it was filed in contravention of Sections 48 and 49 of the *Advocates Act*, as no proper suit existed.
3. The objection dated 15<sup>th</sup> July 2025 takes precedence, as it raises a threshold issue regarding the authority of Nyaanga & Mugisha Advocates to act in these proceedings. If they are improperly on record, then their objection dated 20<sup>th</sup> June 2024 and all associated pleadings fall with it.
4. At the time of preparing this Ruling, the Court found no submissions filed by the client in response to the preliminary objection raised by the advocate. However, the advocate filed grounds of opposition in support of the objection dated 15<sup>th</sup> July 2025 but did not accompany them with written submissions.



## Analysis and Determination

5. The core issue is whether the firm of Nyaanga & Mugisha Advocates are properly on record. The provision under Order 9 Rule 9 applies only where judgment has been entered, and requires either an application for leave to be filed or the consent of the outgoing advocate.
6. In this matter, there is no judgment on record. What exists is a certificate of taxation issued following ex parte taxation proceedings. As held in *Musyoka & Wambua Advocates V Rustam Hira Advocate*, [2006] eKLR, a certificate of taxation is not a judgment. It only becomes a judgment upon adoption under Section 51(2) of the *Advocates Act*. Until that point, it cannot be equated to a judgment for purposes of Order 9 Rule 9.
7. Accordingly, the applicable legal framework is Order 9 Rule 5 and Rule 6, which permit a party to change advocates before judgment by filing a Notice of Change of Advocates without leave of court. It is also relevant that the client states that the firm of Nyaanga & Mugisha Advocates replaced the firm of Momanyi & Associates who had been instructed but failed to enter appearance or act for the client. The advocate does not in fact contend that the taxation proceedings proceeded ex parte.
8. As earlier noted, no written submissions were filed in respect of the preliminary objection. At the risk of seeming to have entered the arena of conflict, but equally compelled by the need to do justice and expedite the determination of the preliminary objection, I took the liberty to review the status of representation on the CTS platform.
9. I have established that the firm of Nyaanga & Mugisha Advocates filed their notice of appointment on 3<sup>rd</sup> June 2024 and have since acted for the client. No evidence has been provided to demonstrate that the previous firm of advocates ever filed a notice of appointment, entered appearance, or participated in the taxation proceedings. In effect, and technically, no advocate was ever properly on record for the client prior to the entry of Nyaanga & Mugisha Advocates.
10. In the circumstances, it is evident that Nyaanga & Mugisha Advocates were the first advocates to properly come on record for the client. There being no prior advocate on record, there was no requirement for leave of court or the filing of a notice of change of advocates. Their entry was procedurally regular under Order 9 Rule 5 and Rule 6. Having therefore found that Nyaanga & Mugisha Advocates are properly on record, I now proceed to consider the second preliminary objection dated 20<sup>th</sup> June 2024.
11. The objection is raised by the client. It is premised on the ground that the application for adoption of the certificate of taxation as filed by the advocate is incompetent and incurably defective, having been brought in contravention of Sections 48 and 49 of the *Advocates Act*, Cap 16 Laws of Kenya, in the absence of an existing suit. There is no contestation that the subject matter of the advocate's instructions involved non-contentious advisory services rendered in the context of a criminal investigation, and there was no active case before any court.
12. According to the client, the advocate's fees, if any, could only have been lawfully ascertained and recovered through the institution of a suit for recovery in accordance with Section 48, not by way of taxation. It is therefore submitted that the present application, brought under Section 51(2) of the *Advocates Act*, is procedurally untenable and fatally defective, as no prior suit had been filed by the advocate pursuant to Sections 48 and 49, and there was neither a pending cause nor an existing judgment upon which the certificate of taxation could be enforced.
13. In response, the advocate contends that Sections 48 and 49 of the *Advocates Act* (Cap 16, Laws of Kenya) are not the only legal avenues through which an advocate may pursue recovery of costs. The



- advocate argues that Section 51(2) of the Act provides an alternative and independent mechanism for enforcement, which the advocate elected to proceed under, by filing an application based on a certificate of taxation, rather than initiating a suit under Sections 48 and 49, which would have necessitated obtaining a judgment and decree in a formal suit.
14. The advocate further submits that Section 51(2) specifically contemplates situations where no written retainer agreement exists, as is the case here. In such circumstances, once costs have been taxed and a certificate issued, the Court is empowered to enter judgment in terms of that certificate, unless it is set aside or varied. Therefore, the application before the Court is properly grounded on Section 51(2), and the objection premised on Sections 48 and 49 is misconceived and inapplicable to the present context.
  15. Section 48(1) of the *Advocates Act* sets out the conditions under which an advocate may recover legal fees from a client. It provides that no suit shall be instituted by an advocate for the recovery of costs unless a bill of costs has been delivered or sent by registered post to the client, and at least one month has elapsed thereafter.
  16. Once this precondition has been satisfied, the advocate may bring a suit to recover the outstanding fees. However, the statute also clarifies that the advocate is not precluded from taxing the bill of costs even if no suit for recovery has been filed. In other words, taxation of costs may proceed independently of the filing of a recovery suit. This is provided for under Section 51(1).
  17. Section 51(2), under which the application has been brought, allows a certificate of taxation to be converted into a judgment:

“The certificate of the taxing officer... shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make an order... that judgment be entered for the sum certified to be due with costs.”
  18. In *Kalonzo Musyoka & Paul M. Wambua (Practicing as Musyoka & Wambua, Advocates) V Rustam Hira*, (2006) KEHC 3078 (KLR). The Court in that case stated, and I respectfully concur, that:

“...sub-section (1) of section 48 above does not state that an advocate’s costs must in all cases be recovered by way of plaint. Far from it. The section simply lays down a condition precedent for the filing suit for recovery of costs. That condition is delivery or sending by registered post to the client a duly signed bill of costs, which may be in summarized form, at least one month before filing action. Section 49 of the Act lays out the procedure in an action where the quantum of costs is challenged by defence. It is to be noted that such procedure may include taxation before the suit is set down for hearing.”
  19. The Court also noted that Section 51(2) applies where costs have been taxed and there is no requirement for an antecedent suit to be filed under Section 48. In the present case, it is undisputed that the advocate’s services were rendered outside the context of a court case, and no formal suit for recovery of fees under Section 48 was filed. The advocate instead proceeded to taxation, and upon obtaining a certificate, sought its enforcement via Section 51(2) of the Act.
  20. The fact that the subject matter did not arise from a formal suit does not preclude the application of Section 51(2), particularly where the advocate has complied with the requirement of taxation. The client’s objection conflates the procedure for instituting a suit for recovery with the statutory option for entry of judgment on taxed costs. These are distinct pathways. Once taxation has been properly conducted, Section 51(2) applies.



## **Final Orders**

21. Accordingly,

- a. The Preliminary Objection dated 15<sup>th</sup> July 2025 challenging the propriety of Nyaanga & Mugisha Advocates being on record is dismissed.
- b. The Preliminary Objection dated 20<sup>th</sup> June 2024, premised on non-compliance with Sections 48 and 49 of the [Advocates Act](#), is found to be without merit and is hereby dismissed.
- c. The application for judgment based on the certificate of taxation under Section 51(2) is properly before this Court.
- d. The matter shall proceed for determination on the merits of the application.
- e. Each party shall bear their costs of the preliminary objections

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY 2025.**

**F. MUGAMBI**

**JUDGE**

