



**Wiper Democratic Party v Mohamed & another; Makau (Judgment debtor)
(Election Petition Appeal E001 of 2022) [2025] KEHC 10002 (KLR)
(Constitutional and Human Rights) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
ELECTION PETITION APPEAL E001 OF 2022**

EC MWITA, J

JULY 11, 2025

BETWEEN

WIPER DEMOCRATIC PARTY APPLICANT

AND

MOHAMED ADAN MOHAMED 1ST RESPONDENT

BETABASE AUCTIONEERS 2ND RESPONDENT

AND

MARCOS KITHUKU MAKAU JUDGMENT DEBTOR

RULING

1. This is a ruling on a motion application dated 16th August 2024 by Wiper Democratic Party (the Applicant) seeking to set aside the warrants of attachment and sale and proclamation both dated 2nd August 2024. The motion application is supported by an affidavit sworn by Shakila Abdalla.
2. The application is premised on the grounds that the warrants of attachment and sale and the subsequent proclamation are incorrect, illegal, unprocedural and unlawful. The applicant states that following the decision of the Political Parties Dispute Tribunal made on 25th May 2022, the Judgment debtor lodged an appeal to this Court and the applicant was joined in the appeal as the 1st interested party.
3. On 8th July 2022 the Court (Mrima, J.) delivered a judgment striking out the appeal with costs. The 1st respondent then filed his party and party bill of costs dated 29th March 2023 for taxation. The party and party bill of costs was taxed and on 26th September 2023, the taxing officer delivered her decision



and allowed the bill of costs at Kshs. 698,816.67. A certificate of taxation was issued to that effect on 1st November 2023.

4. The applicant asserts that the party and party bill of costs was taxed against the appellant who was the judgment debtor being the appellant whose appeal was struck out in the judgment of 8th July 2022. Further, that the Deputy Registrar's decision dated 26th September 2023 was also against the appellant. However, the applicant was later served with warrants of attachment and sale by auctioneers instructed by the 1st respondent. The applicant received another warrant of attachment and sale dated from the 2nd respondent.
5. The applicant states that although it notified the 1st respondent, the auctioneers and the Deputy Registrar of this error in letters dated 2nd May 2024, 15th August 2024 and 14th August 2024, no action was taken. It is the applicant's contention, therefore, that the warrants of attachment and sale as well as the proclamations are irregular, illegal and unlawful because no order for costs had been made against it either in the judgment in the appeal or the certificate of taxation.
6. The applicant posits that the judgment as well as the decision of the taxing officer did not apportion any liability against it. The 1st respondent had no justifiable reason therefore to instruct an auctioneer to attach its property as an interested party in the appeal. The applicant relies on the decision in *Republic v Commissioner of Cooperative Development Ex-Parte Telkom Kenya Limited & Another* [2013] eKLR and *Supermarine Handling Services Ltd v Kenya Revenue Authority* [2010] eKLR and urges that the application be allowed with costs.

1st respondent's case

7. The 1st respondent has opposed the application through a preliminary objection and a replying affidavit. The 1st respondent argues that this court lacks jurisdiction to entertain the application because the application offends rule 11 of the *Advocates Remuneration Order*. The 1st respondent however admits the applicant's assertions regarding the dispute before the Political Parties Disputes Tribunal, the Judgment of this court; taxation of the party and party bill of costs and the decision of the taxing officer. The 1st respondent maintains that the applicant did not respond to the appeal; did it object to taxation of the bill of costs or being included in the appeal.
8. The 1st respondent maintains that the taxing officer determined costs payable to him and he begun the process of execution and warrants of attachments and sale were issued against both the applicant and the judgment debtor. The 1st respondent takes the view, that the only way to challenge the taxing officer's decision is through a reference under rule 11 of the *Advocates Remuneration Order* which the applicant has not done. The 1st respondent denies that there was an error in serving the applicant with warrants of attachment, insisting that the warrants of attachment were lawfully issued.
9. The 1st respondent argues that the applicant actively participated in the proceedings which impacted on and caused unnecessary costs upon him. The 1st respondent relies on section 27 of the *Civil Procedure Act* and the decision in *Republic v Rosemary Wairimu Munene, Ex-Parte Applicant v Ibururu Dairy Farmers Co-operative Society Ltd* Judicial Review Application No 6 of 2014 (UR).
10. The 1st respondent asserts that the judgment debtor did not enter appearance or defend the complaint before the Political Parties Disputes Tribunal and has not challenged the Certificate of Taxation as required by rule 11 of the *Advocates Remuneration Order*. The 1st respondent relies on the decision in *Donholm Rabisi Stores (suing as a firm) v East Africa Portland Cement Limited* [2005] eKLR and urges the court to dismiss the application with costs.



Determination

11. I have considered the application, response, arguments made on behalf of the parties and the decisions relied on. The main issue for determination in this application is whether the warrants of attachment and sale as well as the subsequent execution by proclaiming the applicant's property are lawful.
12. The applicant's concern, as I understand it, is that no order for costs was made against it and therefore the warrants of attachment and sale issued and directed at its property as well as the proclamation were not only irregular but also unlawful. The 1st respondent on its part argues that the applicant did not challenge the decision of the taxing officer and for that reason the application has no merit or basis. He maintains that warrants of attachment and sale were properly issued against the applicant and so was the proclamation.
13. Determination of this application depends largely on the judgment dated 8th July 2022. Before dealing with the issue, there is a small question of jurisdiction that I should dispose of first.
14. The 1st respondent argues that this court lacks jurisdiction to determine this application for the reason that the applicant could only have challenged the decision of the taxing officer through a reference as required by paragraph 11 of the [Advocates Remuneration Order](#). Paragraph 11 provides as follows:
 1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 4. The High Court shall have power in its discretion by order to enlarge the time fixed for subparagraph (1) or subparagraph (2) for taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
15. Paragraph 11 provides for the process of challenging a decision of the taxing officer before a Judge and there after an appeal to the Court of Appeal. My understanding of the import of paragraph 11}} is that the taxing officer was well seized of the matter, had jurisdiction to tax the bill of costs but one party is dissatisfied with that decision on grounds that the taxing officer erred on fact or law. However, the issue raised by the applicant is not about the decision of the taxing officer: Rather, the fact that there was no decision against it either in the judgment delivered of 8th July 2022 and the taxing officer's decision of 26th September 2023. In other words, there was no order for costs against the applicant in the judgment or the decision on the taxation of party and party bill of costs.
16. Jurisdiction of this court is donated by article 165(3) of the [Constitution](#). The article confers on this court unlimited original jurisdiction in criminal and civil matters. The jurisdiction of this court in so



far as civil matters are concerned is unlimited. Limitation of jurisdiction can only be by the Constitution as in clause 5 of article 165 or an express provision of a statute which should however be subject to the Constitution itself. In that respect, Paragraph 11 of the Advocate Remuneration Order cannot oust this court's jurisdiction conferred on it by the Constitution. The issue here is on the lawfulness of the warrants issued in this matter and the subsequent attempt to proclaim against the applicant's property and being an issue of civil in nature, this court has jurisdiction to determine it and the application.

Warrants of attachment

17. The applicant argues that the warrants of attachment and sale as well as the proclamation issued against it is unlawful and illegal. According to the applicant, the court did not order costs against it in the judgment delivered on 8th July 2022 where it was an interested party. Similarly, the taxing officer did not issue any certificate of costs against it following the taxation of the party and party bill of costs. For that reason, the warrants of attachment and sale and the subsequent proclamation had no legal basis.
18. I have perused the judgment delivered on 8th July 2022. The court struck out the appeal with costs. In the appeal, the applicant was only named as an interested party and not a respondent. In other words, the applicant was not a principal party in the appeal. The understanding is that the order for costs was against the appellant whose appeal was struck out with costs. Without the court making a specific order that the applicant as an interested party pay costs, there would be no basis for the 1st respondent's argument that the order for costs targeted the applicant.
19. I have also perused the party and party bill of costs as well as the decision of the taxing officer dated 26th September 2023. The bill of costs did not state that it was against the applicant named as an interested party in the appeal and even the bill of costs. The decision of the taxing office as well as the certificate of taxation issued pursuant to the taxation did not also in any way refer to the applicant as the party against whom costs were taxed ad certified. That being the factual position, it has not been explained why warrants of attachment and sale would issue and executed against the applicant in the absence of an order directing the applicant to pay costs to any of the parties in the appeal.
20. The 1st respondent relied on section 27 of the Civil Procedure Act to argue that he was entitled to costs. Section 27 provides as follows:
 1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
 2. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.
21. A part from the fact that costs are at the discretion of the court and follow the event, the court has the final say on who should pay costs in a suit. In this case, the court struck out the appeal with costs without stating who would pay the costs awarded. The party to whom costs were awarded is not in issue since the appeal failed. Flowing from the provisions of the law that costs follow the event and in



the absence of a clear order that the applicant who was only named as interested party in the appeal was to pay costs, only the appellant was responsible for the costs.

22. I have also perused the warrants of attachment and sale issued on 25th April 2024. The warrants refer to the judgment debtor. The judgment debtor in the appeal is the appellant whose appeal was struck out with costs. While awarding costs, the court did not mention the applicant as the party to pay costs and could not therefore be the judgment debtor. It is not clear how the applicant became the subject of execution or why warrants of attachment and sale would be directed at its property.
23. In that respect, there was no basis for directing warrants of attachment and sale to the applicant's property since the judgment did not condemn the applicant to pay cost; the bill of costs was not against the applicant, an interested party in the appeal and the certificate of Taxation did not state that it was issued against the applicant that had only been named throughout the appeal and subsequent pleadings as an interested party. There was no order for payment of costs directed at the applicant to justify execution against the applicant's property.
24. In the circumstances, and for reasons stated above, I am satisfied that the warrants of attachment were not issued against the applicant and any execution against the applicant was not based on any law, court order or justifiable cause. The application dated 16th August 2024 has merit and is allowed with the effect that the warrants of attachment and sale having not been issued against Wiper Democratic Party, could not be executed against it. Any proclamation issued against Wiper Democratic Party by any auctioneers on 25th April 2024 or any other date was irregular and illegal and is set aside. Each party shall bear their own costs of this application.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY 2025

E C MWITA

JUDGE

