



Kinyanjui Nuguna & Co. Advocates v Corporate Insurance Co. Ltd (Miscellaneous Civil Application E147 of 2024) [2025] KEHC 12613 (KLR) (10 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E147 OF 2024
FN MUCHEMI, J
SEPTEMBER 10, 2025**

BETWEEN

KINYANJUI NUGUNA & CO. ADVOCATES ADVOCATE

AND

CORPORATE INSURANCE CO. LTD CLIENT

RULING

1. The application dated 2nd May 2025 seeks for orders of consolidation of the instant matter with Thika HC Misc. Application No. E176 of 2024 and enter judgment or decree for Kshs. 434,200 tabulated as follows Thika HC Misc. Application No. E147 of 2024 -Kshs. 241,700/- and Thika HC Misc. Application No. E176 of 2024 – Kshs. 192,500/-. The applicant further seeks for interest to be provided for at 14% per annum from 18/09/2021 until payment in full.
2. The respondent filed a Replying Affidavit dated 4th May 2025 in opposition to the application.

Applicant's Case

3. The applicant states that its bill of costs in Thika HC Misc. Application No. E147 of 2024 and Thika HC Misc. Application No. E176 of 2024 have since been taxed and the certificates of taxation have been drawn, signed and issued. The applicant states that the respondent has continually neglected or failed to pay legal fees duly earned despite demands and notices.
4. The applicant avers that the respondent is facing a liquidity crisis and the recovery of funds is in jeopardy despite it not knowing the financial liquidity status of the respondent. Furthermore, the applicant argues that it is entitled to fees duly earned in the course of service in line with the Advocates remuneration Order. The applicant further avers that the respondent does not dispute the fees.



The Respondent's Case

5. The respondent states that although common questions of law and facts arise in Thika HC Misc. Application No. E147 of 2024 and Thika HC Misc. Application No. E176 of 2024, the reliefs sought in the two applications arise from a different set of transactions. The respondent further states that it is not desirable to consolidate the two applications as they will need to account for them separately when settling the taxed costs in the fullness of time.

The respondent avers that they became aware of the taxed costs upon filing the instant application as they were never served with the certificates of taxation issued on 16/4/2025 in both matters. Thus the in the absence of proper service thereof, it is trite law that the applicant never granted them adequate time and opportunity to settle the costs. Thus it would be premature, unfair and unjust to enter judgment and decree against them and further impose interest without proper service of the certificates of taxation.

6. The respondent states that it is defamatory and unjust for the applicant to allege that they are facing a liquidity crisis without any proof or justification thereof.
7. The respondent further urges the court to allow them to settle the taxed costs in monthly installments of Kshs. 50,000/- until payment in full.

The Law

Whether the application has merit.

8. The jurisdiction to consolidate suits is donated by Order 11 Rule 3 of the Civil Procedure Rules which provides:-

“With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a case conference in which it shall-

(h) Consider consolidation of suits.”

9. In *Prem Lala Nahata & Another v Chandi Prasad Sikaria* [2007] 2 Supreme Court Cases 551, the India Supreme Court held:-

“It cannot be disputed that the court has power to consolidate suits in appropriate cases....The main purposes of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transactions or series of transactions, or that for some other reasons it is not desirable to make an order consolidating the suit.”

10. In determining the question on consolidation of suits the Supreme Court in *Law Society of Kenya v Center for Human Rights & Democracy & 12 Others* [2014] eKLR held:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties.



Consolidation was never intended to confer any undue advantage upon the party that seeks it, nor was it intended to accession any disadvantage towards the party who opposes it."

11. In *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* [2000] eKLR, the Court held:-

"The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where:-

- a. Some questions of law or fact arises in both or all of them.
- b. The rights or reliefs claimed in them are in respect of the same transactions.
- c. For some other reasons, it is desirable to make an order for consolidating them."

12. From the foregoing, it is clear that the court has a wide discretion in ordering consolidation of suits. Consolidation will be ordered if there is a common question of law or fact in the suits, the reliefs or rights sought arise from the same or a series of transactions, or for any other reason such as for convenience, avoiding multiplicity of suits, expedition and in order to meet the overriding objective set out in the *Civil Procedure Act*. See *Kinuthia v Ndiritu* (Miscellaneous Civil Application E456 of 2022) [2020] KEHC 5772 (KLR) (Commercial and Tax) (13 May 2024) (Ruling).

13. The applicant has not laid out its grounds for consolidating the two suits however the respondent in opposition to the same has stated that the reliefs sought in the two applications arise from a different series of transactions. The instant matter emanates from *Thika CMCC No. 499 of 2017 Esther Wanja Gitonga (Suing as the personal representative of the Estate of Gitonga (Deceased) v West Build General Contractors Simba & Corporation Limited* which matter arose from a road traffic accident. The matter Misc. Civil Application No. E176 of 2024 emanates from *Thika CMCC No. 597 of 2020 Ruth Nanzai Olumasai & Another v Simon Njoroge Mwaura*. The applicant has not shown whether the causes of action are the same or they arise from the same road traffic accident. Furthermore, the defendants are not the same parties which would discern that the matter arose from the same accident. The burden of proof lies on the applicant. As the applicant has failed to show on what grounds the matters should be consolidated it is my considered view that he has failed to demonstrate a case for consolidation of the two suits.

14. The applicant argues that its bill of costs dated 10th September 2024 was taxed and allowed at Kshs. 241,700/- on 27th January 2025 and a certificate of taxation issued. Thus the applicant prays that judgment be entered for the said sum. I have perused the record and noted that the applicant's bill of costs dated 10th September 2024 was taxed and allowed at Kshs. 241,700/- on 27th January 2025. A certificate of taxation was issued on 16th April 2025.

15. Taxation is a matter that is guided by the *Advocates Act* and the Advocates Remuneration Order, Section 51(2) of the *Advocates Act* which provides that:-

"The certificate of the taxing officer by whom any bill has been taxed 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 such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."

16. The above provision is clear that the certificate of costs once issued by the taxing officer is final unless set aside or altered by the court. The certificate of costs here dated 16th April 2025 were issued in both applications. If the respondent claims it was not served, the applicant can serve them afresh. The record



shows that the respondent was served with a hearing notice for taxation. The court is at liberty to make orders that judgment be entered in terms of the amount in the certificate of costs in the case of an advocate client bill of costs. Notably the respondent does not dispute the taxed costs as they did not file any objection or a reference following taxation. It is noted that no issue has been raised on the retainer or the costs in the instant application. Thus, it can be inferred that the respondent does not dispute the taxed costs.

17. The respondent urges this court to allow them to settle the decretal amount in monthly instalments of Ksh.50,000 until payment in full. This prayer was contained in paragraph 4 of the supporting affidavit. The applicant did not oppose this prayer through a further affidavit or in any other way. It is therefore assumed that the applicant had no objection to the prayer. However, payment of Ksh.50,000/= monthly will take more than eight months to clear the debt. This court will therefore make orders that are fair and just to the parties.
18. I find this application successful and I hereby allow it in the following terms: -
 - a. That the two HC Misc. Application Nos E147 of 2024 and E176 of 2024 are hereby consolidated for purposes of execution.
 - b. That judgment is hereby entered in favour of the applicant against the respondent for Ksh.434,200/= with interests at court rates until payment in full.
 - c. That the respondent shall settle the amount owing in instalments of Ksh.100,000/= by end of each calendar month and in default execution to issue.
 - d. Each party to meet their own costs of this application.
19. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

