



**Pembe Flour Mills Limited v Kingara t/a Gichuki Kingara &
Company Advocates (Miscellaneous Application E353 of 2024)
[2025] KEHC 12517 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E353 OF 2024**

**JWW MONG'ARE, J
SEPTEMBER 1, 2025**

BETWEEN

PEMBE FLOUR MILLS LIMITED PLAINTIFF

AND

**PETER GICHUKI KINGARA T/A GICHUKI KINGARA & COMPANY
ADVOCATES DEFENDANT**

RULING

1. The Plaintiff on 25th June 2024 moved this Honourable Court by an Originating Summons filed under Section 55 and 56 of the *Advocates (Deposit Interest Rules)*, Order 22 Rule (1) & (2), Order 27 Rule (1) and Order 52 Rule 4 subrule (1) & (2), Rule 7 subrule (1)(b)&(2) of the *Civil Procedure Rules* seeking the following reliefs:
 1. That the Plaintiff / Applicant be allowed to demand and execute upon Advocate Peter Gichuki Kingara t/a Gichuki Kingara & Co. Advocates, 5th Avenue Office Suites, 4th Floor, 5th Ngong Avenue Nairobi on the decretal sum arising from the Award in Nairobi High Court Case Number 238 of 2011 in which the Advocate Acted for the Applicant but refuses to account for the decretal sum together with interest and costs paid into his account.
 2. That the Plaintiff / Applicant having an advocate-client relationship filed a Civil Suit Nairobi High Court Case Number 238 of 2011 the Advocate had professional undertaking to the Applicant through his firm of Advocates, Gichuki King'ara & Co. Advocates and was under obligation to pay in full the Decretal sum of Kshs.9,083,713.00/= to the Applicant which plus interest of Kshs.17,440,728.96/= and costs of Kshs.435,686.00/= amounts to a total sum of Kshs.26,960,127.96/= which amount remains unpaid to the Plaintiff / Applicant since the year



2021 until today and the Honourable Court be pleased to order the payment of the principal with interest and costs totaling to Kshs.26,960,127.96/=.

3. That as per the judgment entered on October 2,2015, the Plaintiff 's Principal Amount of Kshs.9,083,713.00/=, interest of Kshs.17,440,728.96/= and costs of Kshs.435,686.00/= all totaling to Kshs.26,960,127.96/= is due and payable to the Applicant and the defendant/ respondent be ordered to pay the full sum to the Plaintiff/Applicant or make payment to the Court such money or securities for the applicant being the current decretal sum plus costs and interest claimed and payable to the Plaintiff /Applicant and should the respondent refuse to pay, a notice to show cause why he should not be arrested and jailed be issued.
 4. That costs of this Application be provided for.
2. Immediately and upon being served with said Originating Summons Application the Defendant by a Certificate of Urgency filed on 14th October 2024 brought a Notice of Motion application under Sections 1A,1B3A of the *Civil Procedure Act*, Order 51 Rule 1, Order 52 Rule 4(3) of the *Civil Procedure Rules* and Section 44(30) of the *Advocates Act* seeking the following orders:
1. Spent
 2. Spent
 3. That these proceedings be stayed pending assessment & taxation of Advocates Bills of Costs in the following suits:
 - i. Nairobi High Court Civil Suit No. 238 of 2011- *Pembe Flour Mills Limited v British American Insurance Company Limited*.
 - ii. Nairobi Civil Appeal No. 347 of 2018- *British American Insurance Company Limited v Pembe Flour Mills Limited*.
 - iii. Nairobi Civil Application Appeal (Application) No. 347 of 2018- *British American Insurance Company Limited v Pembe Flour Mills Limited*.
 - iv. Milimani Chief Magistrates' Court Civil Suit No. 3314 of 2015- *Edward Mulinge Sasati v Pembe Flour Mills Limited*.
 - v. Milimani Chief Magistrates' Court Civil Suit No. 4875 of 2012- *Majaliwa Majengo Fredrick v Pembe Flour Mills Limited*.
 - vi. Kilungu Resident Magistrates' Court Civil Suit No. 86 of 2014- *Nicholas Mutuku Ndambuki v Pembe Flour Mills Limited*.
 - vii. Milimani Chief Magistrates' Court Civil Suit No. 6081 of 2011- *Joseph Namanyi v Pembe Flour Mills Limited*.
 - viii. Milimani Chief Magistrates' Court Civil Suit No. 13964 of 2005- *Edward Odanga Dimbidi v Pembe Flour Mills Limited*.
 - ix. Milimani Chief Magistrates' Court Civil Suit No. 980 of 2010- *Fred Thomas Makoru v Pembe Flour Mills Limited*.
 - x. Milimani Chief Magistrates' Court Civil Suit No. 6814 of 2010- *Benard Sivengo Ndetta v Pembe Flour Mills Limited*.



- xi. Milimani Chief Magistrates’ Court Civil Suit No. 6658 of 2009- Maxwel Makori v Pembe Flour Mills Limited.
 - xii. Milimani Chief Magistrates’ Court Civil Suit No. 3207 of 2014- Ronald Anyenga v Pembe Flour Mills Limited.
4. That upon taxation, accounts be taken and proceeds of the Judgment in Nairobi High Court Civil Suit No. 238 of 2011- Pembe Flour Mills Limited v British American Insurance Company Limited be applied to settle the taxed bills and the balance (if any) be released to the Plaintiff.
 5. That costs be in the cause.
3. The application is supported by the grounds set out on its face and the supporting affidavit of Peter Gichuki Kingara sworn on 14th October 2024. The Application is opposed and the Plaintiff / Respondent has filed a replying affidavit sworn by Salim A.a Bajaber on 4th November 2024. Both parties have filed written submissions which I have carefully considered.
 4. It is not in dispute that the parties herein enjoyed an Advocate- Client relationship and neither is it in issue that the Advocate, the Defendant in this suit represented the Plaintiff in Nairobi HCCC No. 238 of 2011 between the Pembe Flour Mills Limited (the Plaintiff) v British American Insurance Company Limited and by virtue of the said representation received the sum of Kshs.9,083,713.00/=, plus interest of Kshs.17,440,728.96/= and costs of Kshs. 435,686.00/= all totaling to Kshs.26,960,127.96/=. What is in dispute and which this Court has been called to determine is whether the Defendant should be allowed to continue retaining the said monies pending the determination and taxation of his Bills of Costs in the various cases listed above and in which he represented the Plaintiff in various Courts across the Republic of Kenya.
 5. The present application has been brought under Order 52 Rule 4(3) of the [Civil Procedure Rule](#) which provides as follows; -“4. power to order advocate to deliver accounts and documents [order 52, rule 4]
 - (1) where the relationship of advocate and client exists or has existed the Court may, on the application of the client or his legal personal representative, make an order for—
 - (a) the delivery by the advocate of a cash account;
 - (b) the payment or delivery up by the advocate of money or securities;
 - (c) the delivery to the applicant of a list of the money or securities which the advocate has in his possession or control on behalf of the applicant;
 - (d) the payment into or lodging in Court of any such money or securities;
 - (e) the delivery up of papers and documents to which the client is entitled.
 - (2) applications under this rule shall be by originating summons, supported by affidavit, and shall be served on the advocate.



- (3) if the advocate alleges that he has a claim for costs the Court may make such order for the taxation and payment, or securing the payment, thereof and the protection of the advocate’s lien, if any, as the Court deems fit.”
6. In addition, the Defendant has urged the Court to be guided by the decision in *Booths Extrusions Limited (Formerly Booth Manufacturing Africa Limited v Dumbeya Nelson Muturi Harun & Company Advocates* (2014)eKLR where the judge observed as follows ;-
- “(18) a review of case law in context of an Advocate – Client relationship, will reveal that there is the general line which confers upon the Advocates the right to retain all papers, money or other chattels the property of their client which came into possession of the Advocates as their client’s advocate until all costs and charges due to the Advocates are paid. The lien is general and not restricted to costs owing in respect to the property which the client is claiming possession. It is simply a retaining lien premised upon the advocate having actual physical possession of the subject of the lien.”
7. In opposing the application, the Plaintiff has argued that taxation of Advocates- Client’s Bills of costs is an independent judicial process and does warrant a stay of proceedings as sought in the said application by the Defendants. The Plaintiff argues that the Defendant has not demonstrated to this Court was served with a demand for fees before the filing of the bills of costs and declined to settle them to warrant the Defendant to move and tax his bills for which he seeks to stay the present application and that there is no justification for the Defendant to seek to exercise a lien over the sum of Kshs.26,960,127.96/= received by him in his capacity as the Plaintiff’s advocate. The Defendant argues that such a lien can only exist where the Defendant’s having been demanded and not paid for have been taxed by the Court and a certificate of taxation thereto issued in accordance with the Advocates remuneration Order.
8. To support this argument, the Plaintiff urged the Court to be persuaded by the decision in *Ocean View Plaza Limited v Gor Chitranjan Bhanuprasad and Gor Shishir Sooryakank Bhanuprasad t/a C B Gors & Gor Advocates* (2020) eKLR where the Court while dealing with a similar matter to the one before the Court held as follows ;-“ in relying on Section 48(1) of the *Advocates Act* an advocate’s fees are not due until his bill of costs has been served on the client and where it is not settled, until it is taxed by Court.”
9. In addition to the above argument the Plaintiff argued that what is being detained by the Defendant amounts to client’s money within the meaning of the Advocates(account) Rules and the same is not available for use or appropriation by the Defendant and what the Defendant purports to do amounts to professional misconduct which the Court should not condone. The Defendant urged the Court to find that the Court has elaborated on this issue in *Ger -v- Marmanet Forest CoOperative & Credit Society Ltd*(2002) eKLR where the Court stated;-“ Client’s money is defined under the Advocates(Accounts) Rules as money held or received by an advocate on account of a person for whom he is acting in relation to the holding or receipt of such money either as an advocate or, in connection with his practice as advocate as agent, bailee, trustee, stakeholder or in any other capacity”.
10. The Plaintiff further urged the Court to be persuaded by the holding on the question client’s money by the decision of Lesiit J(as she then was) in *John Karungai Nyamu & Another v Muu & Associates Advocates* (2008)eKLR where she stated as follows “.....Section 48 of the *Advocates Act* Stipulates;

“Subject to this Act, no suit shall be brought for the recovery of any costs due to an Advocate or his firm until the expiry of one month after a bill for such costs, which may be in



summarised form, signed by the Advocate or a Partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause, to be verified by an affidavit filed with the Plaintiff for believing that the party chargeable there with is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before the expiry of the period of one month".

It is clear from the foregoing that an Advocate's fees are not due until his Bill of Costs has been served on the client and where it is not settled, until it is taxed by the Court.

..... The Advocate has no right under any law to hold monies that which have come to him for onward transmission to his client as lien, at least no such laws have been cited to the Court. What the Advocate is doing is holding onto the Plaintiff's monies, is irregular and the Court cannot condone the same.".

11. I am persuaded by the holding of Justice Lesiit(J, as she then was) cited above and having considered the material placed before this Court by the parties, I agree with arguments put forth by the Plaintiff and I find no evidence has been tendered to demonstrate to the Court the defendant has at any one time before the filing of the present suit required that the Plaintiff settle the fees for representation in the various suits cited herein and listed as hereinabove for payment. Neither has the Defendant attached to these proceedings the intended Bills of costs that are before the Court for taxation as required by law in order to warrant the further detention of the monies received by him in 2021 for onward transmissions to the Plaintiff. I am therefore persuaded that the Defendant/Advocate has not established the threshold necessary for grant of the orders of stay of the proceedings in the suit before this Court. In any event, the present application seeks a stay of proceedings pending the taxation of the bills of costs in the various suits cited herein above. It has not been demonstrated to this Court that there are Bills of costs filed anywhere before any of the Courts where the matters emanated from and pending taxation by the said Courts.
12. In sum I find the present application is without merit. I dismiss the same and vacate the interim orders issued by the Court herein. I award costs of this application to the Plaintiff. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2025

J.W.W. MONGARE

JUDGE

In the presence of

Mr. Chisengo for the Plaintiff /Respondent.

Mr. Mirie holding brief for Mr. King'ara for the Defendant/Applicant.

Amos- Court Assistant

