



**Mwamunga & another (Administrators of the Estate of the Late Eliud Timothy Mwamunga) v Marlone Kinango Mwangome t/a Mwangome & Company (Miscellaneous Application E052 of 2023) [2024] KEHC 11010 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11010 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS APPLICATION E052 OF 2023  
GMA DULU, J  
SEPTEMBER 19, 2024  
IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER  
AND  
IN THE MATTER OF THE ESTATE OF ELIUD TIMOTHY MWAMUNGA (DECEASED)**

**BETWEEN**

**SAMUEL MAZERA MWAMUNGA ..... 1<sup>ST</sup> CLIENT  
JOSIAH CHOLA MWAMUNGA ..... 2<sup>ND</sup> CLIENT  
ADMINISTRATORS OF THE ESTATE OF THE LATE ELIUD TIMOTHY  
MWAMUNGA**

**AND**

**MARLONE KINANGO MWANGOME T/A MWANGOME &  
COMPANY ..... ADVOCATE**

**RULING**

1. In response to an application dated 28<sup>th</sup> March 2024 filed herein by way of Chamber summons for review, variation or setting aside the certificate of taxation issued by the Deputy Registrar on 20<sup>th</sup> March 2024 in respect of the Party and Party Bill of Costs dated 28<sup>th</sup> August 2023 filed through W. G. Wambugu & Company Advocates, a Notice of Preliminary Objection was filed by the respondent through Kimiti & Associates Advocates, dated 9<sup>th</sup> April 2023 (should be 2024) in the following terms:-
  1. That there is no judgment on record in this matter, nor is there any application filed seeking orders for one.
  2. That there are no garnishee proceedings filed in the matter.



3. That the application herein is contrary to the overriding objective of the court, bad in law, frivolous, vexatious, an abuse of the court process and should be dismissed with costs in limine.
2. This ruling is for a determination of the above Preliminary Objection.
3. The Preliminary Objection, was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimiti & Associates Advocates for the objector/respondent, as well as the submissions filed by W. G. Wambugu & Company Advocates for the applicants. I have to acknowledge that both sides cited decided court cases.
4. In determining the issues raised, I have to bear in mind that what constitutes a proper Preliminary Objection, as stated in the case of *Mukisa Biscuits Manufacturing Company Ltd =Versus= West End Distributors* (1969) EA 696 a decision of the East African Court of Appeal, in which Sir Charles Newbold P., stated at page 701 as follows:-

“ A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
5. Coming now to the present matter, I note that the objector or respondent has stated as one objection that there is no judgment on record, nor is there an application filed seeking for judgment and that no garnishee proceedings have been filed in the matter. However, he has not cited any law which demands such requirements to be fulfilled or done, before an application such as the one filed by the applicant herein could be filed. This court is thus left to speculate on the factual and legal position applicable raised in this objection.
6. In those circumstances, I agree with the contention of counsel for the applicant that the objector does not raise a pure point of law but a mixture of facts and matter and law to be ascertained by the court, and thus complaint does not qualify or satisfy the definition of a proper Preliminary Objection.
7. With regard to the objection that application filed herein is an abuse of the court process, such contention is not sustainable as the *Advocates Act* (Cap.16) and the *Remuneration Order Rules* provide that any challenge to the Taxing Officer’s decision in assessing advocates costs, be brought to the High Court by way of a Chamber Summons for consideration and determination. In this regard, the *Civil Procedure Rules* relied upon by the objector are not of help as, in their place, the *Advocates Remuneration Order* and rules apply.
8. As to whether the application is frivolous and abuse of the court process, my answer is in the negative. My above finding is fortified by the reasoning in the case of *Madura & Company advocates =Versus= Magugu* (2002) 2 EA wherein Ringera J. (as he then was) stated as follows:-

“ As I understand the practice relating to Taxation of Bills of Costs, any complaint about the decision of the Taxing Officer whether it relates to a point of law taken with regard to Taxation or to a grievance about the Taxation of any item in the Bill of Costs is ventilated by way of a Reference to a Judge in accordance with paragraph 11 of the *Advocates Remuneration Order*.”
9. I thus find that the Preliminary Objection herein raised have no merits. I dismiss the Notice of Preliminary Objection dated 9<sup>th</sup> April 2024. Costs of the objections will abide the determination of the pending Chamber Summons herein.



**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2024 IN OPEN COURT  
AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred – Court Assistant

Ms. Manea holding brief for Ms. Kimiti for applicant

Mrs. Wambugu for respondent

