

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISC. CAUSE NO. E117 OF 2023

KAGWIMI KANG'ETHE & CO. ADVOCATES.....APPLICANT
VERSUS
KIRINYAGA COMPLEX ACADEMY LIMITED.....RESPONDENT

RULING

1. Before the Court is the applicant's Notice of Motion dated 7th December 2023, made under Order 22 Rule 48(1) of the Civil Procedure Rules, Section 52 of the Advocates Act and Sections 1A, 1B and 3A of the Civil Procedure Act, seeking an order directing all that property known as Land Reference No. Inoi/Kerugoya/2037 (the suit property) situated in Kirinyaga County and registered in the name of the respondent be attached and further, a charging and/or prohibitory order be issued forthwith stopping the registration or any further dealings in respect of the suit property in order to secure payment of the applicant's taxed costs of Kshs. 2,791,751/-.
2. The application is based on the grounds on its face, the supporting affidavit sworn by Advocate George Kang'ethe on

7th December 2023 and written submissions dated 11th April 2024.

3. The grounds are that:

- a) The respondent is the registered proprietor of all that property known as LR No. Inoi/Kerugoya/2037 situated in Kirinyaga County.
- b) The applicant rendered legal services on behalf of the respondent in HCCC No. 478 of 2007 - Kirinyaga Complex Academy v Co-operative Bank of Kenya Limited but the respondent failed to pay for the services rendered.
- c) As a consequence, the Advocate/Applicant filed an Advocate/Client Bill of Costs dated 16th February 2023 for taxation before the Deputy Registrar of this Court.
- d) The taxation proceedings were concluded and by a Certificate of Taxation given on 8th November 2023, the applicant's Bill of Costs was taxed and allowed in the sum of Kshs. 2,791,751/- against the respondent.
- e) Despite demand and indulgence having been extended to the respondent, it has failed to pay the taxed amount of Kshs. 2,791,751/- together with accrued interest thereon or any part thereof to date.

- f) Under Section 52 of the Advocates Act, the advocate/applicant is lawfully entitled to attach and/or register a Charge against the subject property to secure payment and recovery of his taxed costs amounting to Kshs. 2,791,751/- together with accrued interest thereon.
- g) The advocate/applicant is not aware of any other assets owned by the respondent which can be attached to secure and/or satisfy the taxed costs.
- h) The advocate/applicant is apprehensive that the respondent is likely to transfer and/or alienate the subject property and thereby frustrate the recovery of the taxed costs.
4. The advocate deposed that in 2007, the respondent instructed the him to file **HCCC No. 478 of 2007 - Kirinyaga Complex Academy Limited v The Co-operative Bank of Kenya Limited & Another** seeking a permanent injunction restraining the defendants from advertising and selling the suit property by public auction to recover a substantial debt which was allegedly due and owing from the respondent to the 1st defendant.
5. The advocate further deposed that he successfully obtained an interim order of injunction preserving the suit property pending the hearing and determination of the suit, conducted and

concluded the hearing of the suit. On 19th September 2019, the Court delivered a judgment finding that the purported public auction of the suit property was irregular, illegal, null and void. The Bank was directed to render a true and proper account to the respondent.

6. The advocate further averred that he engaged in negotiations with the Bank culminating in the settlement of the case and the release of the original title in respect of the suit property and the discharge of charge fully releasing the suit property from any encumbrances.
7. Upon the respondent's request, on 4th August 2021, the advocate released the title and the discharge of charge to facilitate the subdivision of the suit property and the sale of a portion thereof. This was on condition that the respondent would pay the outstanding balance of legal fees, which condition the respondent failed to satisfy despite several reminders prompting the advocate to file his Bill of Costs.
8. On this backdrop, the advocate argued that he is entitled to attach the suit property to secure the payment of the taxed costs. He indicated that he is apprehensive that the suit property may be transferred or alienated before the taxed costs have been paid. He relied on Section 52 of the Advocates

Act and argued that he is entitled to not only tax his costs but register a charge against such property.

9. The respondent did not file any response to the application despite service upon him.

Analysis and determination

10. I have considered the application, the grounds, the affidavit and the submissions. The issue for determination is whether the application is merited.

11. The record confirms that the applicant holds a decree of Kshs. 2,791,751/-. The applicant exhibited a copy of the Title to the suit property and the Certificate of Official Search dated 24th November 2023 confirming that the respondent is the registered proprietor of the suit property.

Final Orders

12. The application dated 7th December 2023 has merit and is allowed with costs.

RULING delivered virtually, dated and signed at **NAIROBI**

This **17th** day of **October** 2024.

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P. MULWA
JUDGE

In the presence of:

Mr. Kangethe for applicant

N/A for respondent

Court Assistant: *Carlos*