



Mwangi t/a Lawrence Mwangi & Mwangi Advocates v Mbiro & another (Family Miscellaneous Application E001 of 2024) [2024] KEHC 14254 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY MISCELLANEOUS APPLICATION E001 OF 2024**

**SM MOHOCHI, J
OCTOBER 3, 2024**

BETWEEN

**LAWRENCE NGUGI MWANGI T/A LAWRENCE MWANGI & MWANGI
ADVOCATES APPLICANT**

AND

**PHILIP KARANJA MBIRO 1ST RESPONDENT
DAVID MUNGAI MWANGI 2ND RESPONDENT**

(ARISING FROM IN THE HIGH COURT OF KENYA AT NAKURU SUCCESSION CAUSE NO. 37 OF 2016 IN THE ESTATE OF LEAH WANJIRU MWANGI (DECEASED) AND SUCCESSION CAUSE NO 38 OF 2016 IN THE ESTATE OF ELIJAH MWANGI MBIRO (DECEASED))

RULING

1. Before me is Notice of Motion Application dated 12th January 2024 filed pursuant to Sections 1A, 1B, and 3A of the *Civil Procedure Act* and Section 51 (2) of the *Advocates Act* Chapter 16 Laws of Kenya and Rule 7 of the Advocates (Remuneration) Order and Order 50 Rule 1 of the Civil Procedure Rules, supported by two sworn Affidavit of Lawrence Ngugi Mwangi one dated 12th January 2024 and a supplementary Affidavit dated 13th June 2024.
2. Essentially the Applicant-Advocate moves the Court seeking judicial adoption of two consent agreements entered into by himself and the Respondents-Clients as follows;
 - a. By virtue of undisputed consensus two (2) agreements between the Applicant and the Respondents on 12th March, 2022, this Honourable Court do expedite on priority basis, the signed agreement as an order of the Court through the Deputy Registrar as the taxing master of this Court.



- b. Pursuant to (a) above, the Deputy Registrar do refer the matter to the Honorable Judge for judgment to be entered in favour of the applicant against the respondents jointly and severally in the sum of Kenya shillings Thirteen Million (Kshs 13,000,000/-) plus interest thereon at Court rates of 14% p.a from 12th March, 2022 till payment in full.
 - c. The Respondents do meet the costs of this application.
3. The Application is premised on the following brief grounds:
 - a. There is in existence two (2) valid, legal and legitimate written and signed agreements between the parties on the total fee of Kshs 13,000,000/-) dated 12.3.2022 respectively;
 - b. There is no contest between the parties.
 - c. The settlement and/or agreements dated 12th March, 2022 is a mutually negotiated one arising from Nakuru High Court Succession Cause Nos 37 of 2016 and 38 of 2016 regarding the estate of The Late Leah Wanjiru Mwangi (Deceased) And Estate of Elijah Mwangi Mbiro (Deceased)
 - d. Payment is long overdue.
 - e. The content and substance of the supporting affidavit of Lawrence Ngugi Mwangi.
4. The Court had when entertaining the Application Ex-Parte on the 22nd January 2024 directed that Service be effected upon the Respondents within 14 days and the Respondents file replies within 28 days and a further mention date for directions was scheduled on the 19th March 2024.
5. On the 19th March 2024 the Applicant indicated that he had effected service and filed a return of service dated 7th February 2024 and filed on the 16th February 2024.
6. On the Part of the Respondent was one Mr. Biko Advocate who when prodded by the Court to indicate if he had properly come on record, he responded that, he had filed his Notice of Appointment in early March 2024. Mr Biko then successfully sought for an adjournment with a seven (7) day leave to file Response. The Court equally issued directions with regards to filling of written submissions and reserved a ruling date for the 18th of June 2024.
7. On the 18th of June 2024, The Applicant through Mr. Mwangi Indicated that he had complied and filed his written submissions and sought for a Ruling Date. Mr. Biko was a no-show on this day.
8. The Application is undefended, Mr. Biko mislead the Court that he had properly come on record in early March 2024, the CTS system does not contain any Notice of Appointment of Advocates by the Respondents filed by Mr. Biko Advocate.
9. Mr. Lawrence Mwangi did not file any written submissions despite reassuring the Court that he had complied.
10. It is the Applicants assertion in his sworn Affidavit dated 12th January 2024, that, the Deputy Registrar is the taxing officer with powers and legal authority to attend to matters regarding taxations or negotiated agreements between advocates and their clients.
11. That, for the said law firm he represented the Respondents in Nakuru High Court Succession Cause No. 37 and 38 for the estate of Leah Wanjiru Mwangi (Deceased) and the estate of Elijah Mwangi Mbiro (Deceased).
12. That, the two estates are for the mother and father of the Respondents who are brothers.



13. He attached two Consent of Advocate Client Bill of Costs agreements dated 12th March 2022 in Nakuru High Court Succession Cause No. 38 of 2016 and No 37 of 2016, both filed on the 14th March 2022 and exhibited as EXLNMI and EXLMNII as the negotiated results of the fees for representation in the two matters aforementioned.
14. That, the mutually agreed amounts are as good as a certificate of costs.
15. That, no party shall be inconvenienced or prejudiced by the orders is being urged profusely to give.
16. That, he has given the Respondents so much time at their request but payment has not been forthcoming.
17. Mr. Mwangi further depones in his supplementary Affidavit dated 13th June 2024, that, as an effort to make the payments, the 2nd Respondent has forwarded him a land sale agreement dated 17th November, 2023 exhibited as EX LNMII together with mutation forms for a land at a price of Kenya shillings Eight Million Nine Hundred and Seventy Thousand (Kshs 8,970,000/=)
18. That, there is no contest or dispute between the law firm of Lawrence Mwangi & Mwangi or himself for that matter with the Respondents.
19. That, the Deputy Registrar who is the taxing officer do adopt the two agreements and/or consents and issue a certificate of costs of Kenya shillings Thirteen Million (Kshs 13,000,000/=) in favour of the applicant against the respondents jointly and severally.
20. That, when the application came up in Court on 19th March, 2024 when Mr. Biko advocate was allowed allowance at his request to come on record for the Respondent he did not oppose the same.
21. That, Mr. Biko was allowed to file any response within a time limit of seven (7) days after which he had the leave to file a supplementary in response to any new issues.
22. That, having waited up to the 12th day of June, 2024 without being served with any response or submissions, the two Respondents instructed him to work for them and ensure the safe sale of Title Nos Miti Mingi/Mbaruk Block 5/302 (Kiungururia) and Block 5/303 (Kiungururia) and from the proceeds thereof each of them got a total sum of Kenya shillings One Million Two Hundred And Fifty Thousand (1,250,000/=) which he banked into their respective banks being Co-Operative Bank A/ C NO 01100026719200 and Equity Bank A/C NO. 0130192336411 of their branches at Nakuru on the 20th Day of April, 2024 exhibited as EX FLNMI (a), and (b).
23. That, the copies of the bankers' cheques are hereby attached as EXFLNMII (a) and (b).
24. The Applicant attached the forwarding letter dated 17.4.2024 from Hari Gakinya & Co. Advocates marked EX FLNMIII.
25. That, from the payments of the proceeds thereof, the Respondents asked him to accept the payment of Kenya shillings Five Hundred Thousand (Kshs 500,000/-) from each of them as part payment of the debt of Kenya shillings Thirteen Million (Kshs 13,000,000/-) which he reluctantly accepted as he wanted the whole of the payment at once.
26. That, rather than paying him a total of Kenya shillings One million (Kshs 1000,000/=) the Respondents paid him Kenya shillings Two hundred thousand (Kshs 200,000/-) totaling to Kenya shillings Four Hundred thousand (Kshs 400,000/-) with a promise that they will pay him a further part of Kenya Shillings Three Hundred Thousand (Kshs 300,000/-) on or before the 31st day of May, 2024 which they had not yet done, save for the 1st Respondent who paid a further sum of Kenya shillings Fifty Thousand (Kshs 50,000/-) by M-pesa through his phone Number 0724 638 454.



27. He attached receipts in acknowledgement of the payments for the payments Exhibited as EX FLNMIV (a,) (b,) and, (c).
28. That, the Respondents have also deposited with him Title Nos. Miti Mingi/miti Mingi Blcok 9/130 (Ndioni), Bahati/Kabatini Block 1/4792 and Kiambogo/Miroreni Block 1 (Itherero) with a view of having all of them sold through his firm and whose proceeds which is due to them should be used as further facts to settle the matter herein as had been mutually consented by him and them see EXFLNMV.
29. That, from his contentious representation of the Respondents in NKU HC Succession Cause No. 38 OF 20216, an affidavit sworn by the 1st Respondent on behalf of himself and the 2nd Respondent on 9th July, 2019 the substance and extent of the Respondents interest is clear spelt out as the 1st Respondent claimed ownership of 430 acres worth Two hundred and Ninety-Five Million five hundred and seventy-three thousand (Kshs 295,573,000/-) EX FLNMVI.
30. The Applicant further attached two confirmed grants for the two succession matters that from the basis of the mutually agreed fees marked as EXFLNMVII (a), and (b).

Analysis and Determination

31. This Court is alive to its jurisdiction and the applicable law is found at Section 51(2) of the *Advocates Act* which reads as follows;

“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.”
32. The above-mentioned provision was reiterated in the case of *Musyoka &Wambua Advocates versus Rustam Hira Advocate* (2006) eKLR where it was held: -

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates. One of those provisions is that the Court has discretion to enter judgment on a Certificate of Taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.....;
33. The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of advocate-client costs as long as:
 - a. the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;
 - b. the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and
 - c. there is no dispute on retainer. In such case, judgment is ordinarily entered in the sum in the Certificate of Costs upon application by the advocate from the expiry to one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount has been paid or tendered in full.”



34. In any event the Rule clearly stipulates that, such claim for interest is limited to costs and disbursements; it does not provide for interest on the full taxed amount.
35. This Court is unpersuaded of the procedural purity, rational and the legality of grant of the prayers sought, from the unopposed pleadings it is clear that there subsists and advocate-client relationship as late as June 2024 and as the Advocate rightly concedes that, there exists no dispute between the advocates and their clients.
36. This Court views this motion as an attempt at prematurely stealing a match by obtaining a judicial pronouncement(s) in vacuum, without a cause.
37. The High Court has a limited role in execution of judgments/ decrees and as the Applicant correctly points out that, Taxation and subsequent execution is within the jurisdiction of the taxing master and the Court can only pronounce the certified taxed costs as a judgment valid for execution.
38. It is noteworthy that, the two Consent of Advocate Client Bill of Costs agreements dated 12th March 2022 in Nakuru High Court Succession Cause No. 38 of 2016 and No 37 of 2016, are both filed on the 14th March 2022 in their respective causes.
39. The Applicant has not disclosed the circumstances giving rise to the recording of the consents or whether the said consents were adopted by the Courts handling the cause(s). However, the filings in those causes presupposes a taxation process which would ultimately give rise to certificates of taxation of costs.
40. In this instance, no certificates of taxation of costs, in Nakuru High Court Succession Cause No. 38 of 2016 and No 37 of 2016 have been exhibited and the Court has not been told if there was none then why?
41. With regard to the claim for interest at 14% on from 12th March, 2022 till payment in full is untenable and can only be awardable from the date of taxation.
42. As this motion has demonstrated an active client-advocate relationship is ongoing, with parties entering into further and/other agreements varying and modifying previous ones, it would be ambitious and an overreach, to invite the Court to wade into, either micromanaging the relationship, or overseeing the same.
43. The upshot is that the Notice of Motion Application dated 12th January 2024 is misconceived and incompetent, for the foregoing reasons. It is hereby struck out.

It is So Ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 3RD DAY OF OCTOBER, 2024.

MOHOCHI S.M.

JUDGE

