



**Mwendwa Mwinzi & Associates v Mutie (Environment & Land
Miscellaneous Case 2 of 2020 & Environment & Land Case 198 of 2017
(Consolidated)) [2025] KEELC 3728 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3728 (KLR)

REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND MISCELLANEOUS CASE 2 OF 2020 &
ENVIRONMENT & LAND CASE 198 OF 2017 (CONSOLIDATED)**

EO OBAGA, J

MAY 13, 2025

IN THE MATTER OF THE ADVOCATES REMUNERATION (AMENDMENT) ORDER, 2014

AND

IN THE MATTER OF THE ADVOCATES ACT, CAP 16 LAWS OF KENYA

BETWEEN

MWENDWA MWINZI & ASSOCIATES APPLICANT

AND

STEPHEN MUTIE RESPONDENT

RULING

1. The Respondent had instructed the Applicant to act for him in Machakos ELC No. 100 of 2015 which was later transferred to Makueni ELC where it became ELC No 198 of 2017 (*Grace Mumo Mbalu & 2 others -vs- Stephen Mutie*).
2. The relationship between the Applicant and the Respondent broke down forcing the Applicant to file an Advocate/Client bill of costs for taxation. The Respondent did not file any response to the bill which was taxed. The Applicant applied and there was entry of judgment for the amount in the certificate of costs.
3. The Applicant filed a Notice to Show Cause in execution of the judgment. The Respondent did not attend court to show cause and warrants of arrest were issued. The Applicant has been unable to have the Respondent arrested as he has gone into hiding.
4. It is on the above basis that the Applicant filed a notice of motion dated 7th March, 2025 in which the following orders are sought:



1. That summons do issue to Dr. Joseph Mutuku Mutie to attend this honourable court and show cause why he cannot be compelled to produce in court and/or explain the whereabouts of Stephen Mutie so as to facilitate execution of warrants of arrest issued by this honourable court against the said Stephen Mutie on 27th February, 2024.
2. That this honourable court be pleased to grant any other relief it deems fit for the ends of justice.
3. That the costs of this application be in cause.
5. The Applicant states that warrants of arrest against the Respondent were issued on 27th February, 2024 and were to be executed by the OCS Makueni police station. The OCS has been unable to effect the warrants as the Respondent is hiding outside the jurisdiction of Makueni OCS. The Applicant states that Dr. Joseph Mutuku Mutie is a brother to the Respondent and that he knows the whereabouts of the Respondent and if he is summoned by court, he will reveal the whereabouts of his brother. The Applicant states that Dr. Joseph Mutuku Mutie will not be prejudiced by the summons.
6. I have considered the Applicant's application. Though Dr. Joseph Mutuku Mutie could be a brother to the Respondent, he was not a party to the suit where the Applicant was acting for the Respondent. The court cannot compel Dr. Joseph Mutuku Mutie to come and assist in arrest of his brother in Civil Proceedings. Dr. Joseph Mutuku Mutie has no legal obligation to assist the Applicant to execute the decree. It is upon the Applicant to see the best way to execute the decree without involving other person who have no legal obligation to assist in execution of the decree.
7. If Dr. Joseph Mutuku Mutie was to be summoned and he failed to come to court, the Applicant might apply for warrants of his arrest which will be very prejudicial to Dr. Mutie and of no legal basis. I therefore decline to allow the application which is dismissed with no order as to costs.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF MAY, 2025.

IN THE PRESENCE OF

Mr. Nguma for Applicant.

Court assistant – Steve Musyoki

