



**Conrad Law Advocates LLP v Kiwipay Kenya Limited & another
(Miscellaneous Application E054 of 2022) [2023] KEHC 995 (KLR)
(Anti-Corruption and Economic Crimes) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 995 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

ANTI-CORRUPTION AND ECONOMIC CRIMES

MISCELLANEOUS APPLICATION E054 OF 2022

EN MAINA, J

FEBRUARY 16, 2023

IN THE MATTER OF THE ADVOCATE'S ACT CAP 16 OF THE LAWS OF KENYA

BETWEEN

CONRAD LAW ADVOCATES LLP APPLICANT

AND

KIWIPAY KENYA LIMITED 1ST RESPONDENT

ECOBANK LIMITED 2ND RESPONDENT

RULING

1. In the notice of motion dated November 16, 2022 the applicant, a firm of advocates, seeks orders to be allowed to hold as lien certain funds belonging to the 1st respondent which are held in the 2nd respondent bank, as lien for their costs pending the hearing and determination of this application as well as the taxation of their bill of costs. The said bill of costs has been presented *vide* ACEC Misc application E051 of 2022.
2. As can be discerned from the grounds on the face of the application and the supporting affidavit sworn by Pascal Musyoki on November 2, 2022, the applicant/advocate represented the 1st respondent in proceedings between it and the Assets Recovery Agency in relation to a sum of Kshs 18,831,118.9 held in accounts Nos 66xxxxx9 and 66xxxxx8 at the 2nd respondent bank; that despite diligently representing the 1st respondent and despite notice and demand being issued the 1st respondent has refused and/or neglected to settle the applicant's costs culminating in the applicant filing a bill of costs for taxation. Further, that the 1st respondent's directions are foreigners with no known local residential address and have recently removed all their Kenyan shareholders and directors from the company register; that the said foreign directors have no other known assets save for the preserved funds in the 2nd respondent



bank and the applicant is apprehensive that should the orders sought not be granted the 1st respondent will remove themselves and the funds from the jurisdiction of this court to the detriment of the applicant hence causing it undue hardship. It is also contended that the applicant stands to suffer no prejudice if the order sought is granted.

3. Nothing was filed in opposition to the application so the same is not opposed. Section 52 of the *Advocates Act* states: -

“Any court in which an advocate has been employed to prosecute or defend any suit or matter may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit or matter and may make orders for the taxation of the costs and for raising money to pay or for paying the costs out of the property so charged as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchase for value without notice be void as against the advocate: provided that no orders shall be made if the right to recover the costs is barred by limitation.”

4. Clearly therefore, the applicant/advocate has a lien over the funds belonging to the 1st respondent for his costs. However, and notwithstanding, that the application was not opposed the applicant having failed to file submissions in this matter as directed by this court is presumed to have abandoned the application. It is also instructive that the application sought a lien only pending its hearing and determination and the taxation of the applicant’s bill of costs which events have both taken place. The application is therefore also spent. Accordingly, it is marked as spent and abandoned and this file is now closed. Orders accordingly.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF FEBRUARY, 2023.

E N MAINA

JUDGE

