



**Mogaka t/a Mogaka Bwongki & Co Advocates v Maimoon t/  
a Maimoon Medical Center (Miscellaneous Application E067 of 2022)  
[2024] KEHC 14101 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14101 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS APPLICATION E067 OF 2022  
SM GITHINJI, J  
NOVEMBER 11, 2024**

**BETWEEN**

**VINCENT MOGAKA T/A MOGAKA BWONGKI & CO  
ADVOCATES ..... APPLICANT**

**AND**

**YUNUS B MAIMOON T/A MAIMOON MEDICAL CENTER ..... RESPONDENT**

**RULING**

1. For determination is a Notice of Motion Application dated 24/6/2024, brought pursuant to Section 1A, 1B and 3A of the *Civil Procedure Act*; Order 7 Rule 3 and Order 10 rule 11 of the Civil Procedure Rules, 2010. The orders sought are framed as follows: -
  1. Spent.
  2. Spent.
  3. That pending the hearing and determination of this application, the honourable court be pleased to set aside its judgment dated 4/6/2024.
  4. That pending the hearing and determination of this application, the honourable court be pleased to direct parties to set-off costs issued in favour of the Respondent vide the judgment dated 4/6/2024 with the amount already paid to the Respondent by the Applicant.
  5. That costs of this application be in the cause.
2. The application is based on the grounds found on the face of the motion and supported by the affidavit sworn by Dr. Yunus B. Maimoon on the even date and a supplementary affidavit he swore on 6/9/2024. The Applicant's case is that on 14/6/2024, the Court adopted the certificate of taxation of costs dated 26/10/2022 as judgment and order. The impact of which required the Applicant to pay the



Respondent an amount of Kshs. 758, 187.95 inclusive of interest. The Applicant deposed that he had already paid to the Respondent the sum of Kshs. 935, 165/-, payment of which he made between 8/5/2019 and 5/11/2022. The Applicant is apprehensive that if the orders sought are not granted, the Respondent shall execute the orders causing him to be prejudiced in a manner not compensable in monetary value.

3. In response, the Respondent filed a replying affidavit sworn on 23/7/2024 by Mr. Vincent Mogaka, the Respondent and an advocate of the high court of Kenya, stating that the application is an afterthought of issues that ought to have been canvassed at taxation. That the amounts said to have been paid to him were for other services rendered to the Applicant as detailed therein.
4. The application was canvassed by way of written submissions which I have carefully considered.
5. Notably, the Applicant filed a similar application in another related suit, Miscellaneous Application No. 63 of 2022. Like in that application, and upon a cursory glance of the present application, the prayers sought are all pending inter partes hearing and determination of the application. The application is therefore spent and the court cannot issue orders in vacuum.
6. The outcome is that the application dated 24/6/2024 is dismissed with costs.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2024.**

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**S.M. GITHINJI**

**JUDGE**

**In the presence of; -**

1. Mr Michira holding brief for Mr Mogaka for the Respondent
2. Mr Towett for the Applicant

Mr Towett; -We request for stay to appeal.

Mr Michira;-In the sister file they were granted a stay and did not comply with stay conditions. They don't deserve a stay.

Court; -Stay request is declined.

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**S.M. GITHINJI**

**JUDGE**

**11/11/2024**

