



Wandaka t/a Kinuthia Wandaka & Company Advocates v Musyoki (Environment and Land Miscellaneous Application 10 of 2020) [2025] KEELC 4665 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4665 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 10 OF 2020
LC KOMINGOI, J
JUNE 19, 2025

BETWEEN

STANLEY KM WANDAKA T/A KINUTHIA WANDAKA & COMPANY
ADVOCATES APPLICANT

AND

NAOMI KANYUA MUSYOKI RESPONDENT

RULING

1. This Ruling is in respect of the Notice of Motion dated 18th April 2023, brought under Section 51(2) of the *Advocates Act*, Paragraph 7 Advocates Remuneration Order, Order 50 Rule 1 & 3 of the Civil Procedure Rules, Section 3A of the *Civil Procedure Act* and other enabling laws. It seeks that:
 - i. This Hon. Court be pleased to enter judgement for the Applicant against the Respondent for the sum of Kshs. 513,830 with interest thereon at the rate of 12% per month (sic) from 5th April 2022 until payment in full;
 - ii. Costs of this application be borne by the Respondent.
2. The grounds are on the face of the application and are set out in paragraphs 1 to 4. The application is supported by the sworn Affidavit of Stanley Wandaka, an Advocate and partner at Kinuthia Wandaka & Co. Advocates. He states that sometime in 2012 his firm was instructed by the Respondent to represent her in ELC case No. 184 of 2017 (formerly Machakos High Court Case No. 299 of 210 (OS). After the case was concluded, it was taxed and a certificate of costs for Kshs. 513,830 issued. This Certificate of taxation has never been disputed nor set aside but the Respondent was yet to make good the payment and as such judgement should be entered in his favour.
3. The application is opposed. The Respondent filed Grounds of Opposition dated 27th February 2025, They are : the application for judgement under Section 51(2) of the *Advocates Act* is untenable where



the Advocate's retainer is in dispute; the Applicant ought to have filed a separate suit for recovery of costs as per Section 48(2) of the *Advocates Act* and that the interest on Kshs. 513,830 should be denied.

4. The Applicant in the Reply to the Grounds of Opposition dated 7th March 2024, stated that the suit could be instituted by way of an application as the Bill of Costs was instituted by way of a miscellaneous application and this was a separate suit from the suit where the Applicant acted for the Respondent.
5. The application was canvassed by way of written submissions.

Submissions of the Applicant

6. The Applicant submitted that the Bill of Costs dated 1st November 2018 against the Respondent was filed in Court on 20th November 2018. The Respondent contested it on grounds that she had not retained the Applicant as her Advocate. In the Ruling dated 26th April 2021, Christine Ochieng J. found and declared that the Respondent had instructed the Applicant. The Deputy Registrar then taxed the Bill of Costs at Kshs. 513,830 in the Ruling dated 30th November 2022. This taxation has never been set aside or altered as held in *Amondi & Co. Advocates vs County Government of Kisumu (2022) eKLR*.
7. Following this, the Applicant filed an application for entry of judgement under Section 51(2) of the *Advocates Act*. Therefore, the Court should enter judgement on Kshs. 513,830 together with interest at 14% per annum as per Rule 7 Advocates Remuneration Rules, from the date of filing the Bill of Costs on 18th November 2018. Reference was made to *D. Njogu & Co. Advocates vs Kenya National Capital Corporation (2006) eKLR* which held that interest should run from when the proper fee note was sent to the client.

Submissions of the Respondent

8. It was submitted that since the Respondent contested retaining the Applicant, then entry of judgement under Section 51(2) of the *Advocates Act* which is not a matter of right but discretion should not be entered in his favour. Reference was made to the Supreme Court case of *Kenya Airports Authority vs Orieno Ragot & Co. Advocates Pet. E011 of 2023*. And that the issue of retainer should be determined and canvassed in a proper suit and not by way of summary judgement.
9. On the issue of interest, counsel asked Court to withhold the entire interest citing *Mercy Mwangi t/a Mwangi Kingera & Co. Advocates vs Invesco Assurance Company Ltd [2017] eKLR* which held that Court had power to reduce the period in which the interest was payable or extend/ alter the interest rate or withhold the entire interest payable in the interests of justice.

Analysis and determination

10. I have considered the Notice of Motion, the Grounds of Opposition, the rival submissions, and the authorities cited and I find that the issues for determination are:
 - i. Whether the Court should enter judgement for the Applicant for Kshs. 513,830 with interest until payment in full as sought in the application dated 18th April 2023;
 - ii. Who should bear the costs of this application?
11. The Applicant has approached Court under Section 51(2) of the *Advocates Act* for enforcement of the Certificate of Taxation dated 5th April 2022 The Respondent contests the application on grounds that she did not retain the Applicant and therefore the issue of retainer should first be addressed in a separate



suit before judgement is entered summarily. The Applicant submitted that the issue of retainer was dealt with by the Hon. C. Ochieng' J in the Ruling dated 26th April 2021.

12. The Applicant filed the Advocate to Client Bill of costs on 20th November 2018 against the Respondent. The Respondent in her Replying Affidavit filed on 18th June 2019 contested the Bill of Costs on grounds that she never instructed the Applicant to act/ represent her in Kajiado ELC Case No. 184 of 2017 (formerly Machakos HCC No. 299 of 2012).
13. In the Ruling dated 26th April 2021, C. Ochieng' J. in this suit made the following pronouncements and determination regarding the issue of the contested retainer:

“... I note the Respondent actually granted the 1st Plaintiff (sic) the Authority to act on her behalf on the aforementioned matter. In the proceedings in respect to matrimonial property which have been annexed to the Supporting Affidavit, the Respondent admitted therein that the Advocate/Applicant herein were acting for her in Kajiado ELC 184 of 2017 (formerly Machakos HCC No. 299 of 2012) and this resulted in the said advocates being ordered to cease acting for the Respondent's husband as it amounted to conflict of interest... from this piece of evidence, it is clear that there was indeed an implied advocate/client relationship between the Advocate/Applicant and the Respondent. I opine that the Respondent is not being candid in these proceedings as for six (6) years, the firm of messrs Kinuthia Wandaka & Co. Advocates were acting for her in a matter, which she has confirmed she has stakes over the suit land. Further, annexure NK3 which are proceedings in Nairobi HC Family Division Civil Appeal No. 21 of 2015 at paragraph 7, she indeed admitted that the Advocate/ Applicant was acting for her together with her husband in Kajiado ELC 184 of 2017 (formerly Machakos HCC No. 299 of 2012). I further wish to reproduce the contents of a letter dated the 19th October 2017 which the Respondent addressed to Advocate/ Applicant where she stated as follows:

“In the year 2012, I signed a document authorizing you to represent us in a case relating to our piece of land in Kajiado. To date you have not provided me with the update on the progress of the same. I am kindly requesting you to furnish me with information on the progress of the case.”

From the averments in the said letter it is evident, the Respondent admitted that the said advocate was acted for both of them... I find that an advocate/ client relationship between the Advocate/Applicant and the Respondent was indeed established when the Respondent allowed the Advocate/Applicant to continue acting for her. It is my considered view that the Respondent is indeed estopped from denying that it did not instruct the Advocate/ Applicant to act for her in the Kajiado ELC 184 of 2017 (formerly Machakos HCC No. 299 of

2012). In the circumstance, I will decline to strike out the Bill of Costs dated the 1st November 2018.

14. From the foregoing, I find that the issue of retainer was duly settled and it is a valid order of the Court unless it is set aside, altered or appealed against. As such, the opposition that the issue of retainer is disputed is invalid and as such fails.
15. Thereafter, the Bill of Costs was taxed at Kshs. 513,830 in the Ruling dated 30th March 2022 and a Certificate of Taxation issue don 5th April 2022. The Certificate of Costs that was issued has neither



been set aside, altered nor referenced against. Therefore, the taxed Bill of costs taxed at Kshs. 513,830 is still valid.

16. The Applicant argues that the judgement for Kshs. 513,830 should be entered together with interest at 14% per annum as per Rule 7 Advocates Remuneration Rules from 5th April 2022 until payment in full. The Respondent has contested this.
17. The said Rule 7 Advocates Remuneration Rules provides: An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.
18. This Court has reviewed several authorities on the interpretation of this Rule 7 of the Advocates Remuneration Rules, and there seems to be divergent opinions on the same. No circumstances were put forth to warrant this court to order interest not to be paid after the date Certificate of Taxation was issued.
19. I therefore, enter Judgement for the Applicant against the Respondent for the sum of Kshs. 513,830 together with interest at 14% per annum from the date of the certificate of Taxation was issued until payment in full.
20. The costs of this application shall be borne by the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF JUNE 2025.

L. KOMINGOI

JUDGE.

In the presence of:

Mr.Wandaka for the Advocate/Applicant.

Mr.Kalii for the Client/Respondent.

Court Assistant – Mutisya.

