



**Githogori & Harrison Associates Advocates, LLP v Ngugi (Environment and Land Miscellaneous Application E018 of 2024) [2025] KEELC 6294 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6294 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2024  
A OMBWAYO, J  
SEPTEMBER 25, 2025**

**BETWEEN  
GITHOGORI & HARRISON ASSOCIATES ADVOCATES , LLP ..... ADVOCATE  
AND  
PIUS MBUGUA NGUGI ..... CLIENT**

**RULING**

**Brief Facts**

1. This is a ruling in respect the application dated 17<sup>th</sup> June, 2025 filed by the Applicant seeking the following orders: -
  - a. Spent.
  - b. That this Honorable Court be pleased to stay execution of the decree dated the 9<sup>th</sup> May 2025 and all actions emanating from the said decree, pending hearing and determination of Milimani COMMSU No. E738 of 2025, Pius Mbugua Ngugi vs Githogori Harrison Associates Advocates LLP.
  - c. That in the alternative, this Honorable Court be pleased to make an order of stay of execution and deposit of the decretal sum in a joint interest earning account held by the parties' advocates, pending hearing and determination of Milimani COMMSU No. E738 of 2025, Pius Mbugua Ngugi V Githogori Harrison Associates Advocates LLP.
  - d. Spent.
  - e. That costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of PIUS MBUGUA NGUGI the Applicant herein sworn on 17<sup>th</sup> June, 2025. He stated that he had instructed the



Advocate/Respondent law firm to represent him in Nakuru ELC Case No. 72 of 2018 Pius Mbugua Ngugi & Others vs The Land Registrar & 5 Others. He further stated that the advocate filed a Bill of Costs for the assessment of legal fees payable to them which the Taxing Master on 26<sup>th</sup> September, 2024 assessed the legal fees payable to the Advocate at Kshs. 3,710, 630.68. He went on to state that the Advocate received a sum of Kshs. 4,190,000 but was obligated to refund Kshs. 479, 369.32 which was money paid to them in excess, of the sum determined by the Taxing Master. He added that despite demand to make the refund payment, the Advocate has failed to do so prompting him to commence legal proceedings against him. He stated that despite being indebted to him, the Advocate has commenced the execution process for recovery of monies. He also stated that the decretal sum ought to be deposited in a joint interest earning account between the parties' advocates until the matter for recovery of the sum Kshs. 479, 369.32 has been determined. He stated that unless this court grants him the orders sought, the Advocate shall proceed to execute the decree for monies that he has already paid.

## Response

3. Counsel for the Respondent filed his Replying Affidavit sworn on 26<sup>th</sup> June, 2025 where he averred that the application was an abuse of the court process. He further averred that it was premised on irrelevant facts that sought to re-open matters that have been conclusively been adjudicated upon. He averred that the court had delivered its ruling on 9<sup>th</sup> May, 2025 where it determined the substantive issues in the taxation dispute. He added that the said ruling was never appealed or reviewed thus the court was functus officio. He also averred that the court could not stay its own final orders in the absence of a valid appeal or review. He averred that it was disingenuous for the Applicant to invoke the provisions of Order 42 Rule 6 of the Civil Procedure Rules in the absence of a substantive appeal. He also averred that the application was defective for failure to disclose material facts particularly the court's ruling on 9<sup>th</sup> May, 2025. He averred that the court's jurisdiction in Advocate-Client Bill of Costs proceedings is governed under Section 51(2) of the *Advocates Act*. He went on to aver that the said section provided that once a certificate of taxation has been issued by the Taxing Officer and has not been set aside, the same was deemed final and the court was obligated to enter judgment in favour of the Advocate. He averred that the Applicant slept on his legal rights and was now seeking to delay and frustrate the Respondent from enjoying the fruits of the judgment. He urged the court to declare the application as res judicata and dismiss the same with costs.

## Submissions

4. Counsel for the Applicant filed his submissions dated 8<sup>th</sup> July, 2025 where he relied on Order 22 Rule 25 of the Civil Procedure Rules and the case of Shoukat & Another V Kodhek & 3 Others [2022] KEELC 13713 KLR. He submits that the Applicant satisfied the pre-conditions for the court to exercise its jurisdiction to grant stay of execution. He also cited the cases of Aswa Developers & Contractors Limited & 2 Others V Synergy Industrial Credit Ltd & Another [2025] KEHC 4165 KLR and Ngathiko & 6 Others V Mwarire & 2 Others [2022] KEELC 15023 (KLR). He submits that the Respondent did not deny having received Kshs. 4,190,000 from the Applicant. He further submits that the Advocate proceeded to commence execution proceedings against the client. Counsel submits that should execution proceed, the Applicant shall have been condemned to pay legal fees twice. He also submits that the Applicant was not indebted to the Advocate.
5. Counsel for the Respondent filed his submissions dated 16<sup>th</sup> August, 2025 where he identified three issues for determination. The first issue was whether this Honorable Court is functus officio. While submitting in the affirmative, he relied on the Court of Appeal in Telkom Kenya limited V John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited) [2014] eKLR and Supreme Court of Kenya in the case of Raila Odinga & 2 Others V Independent



Electoral & Boundaries Commission & 3 Others [2013] eKLR. It was his submission that the application failed to meet the threshold required to warrant an exemption from the doctrine of *functus officio*. He thus submits that the application was ill-advised and procedurally untenable. Counsel cited Section 51(2) of the *Advocates Act* and submits that the certificate of the taxing officer by whom any bill has been taxed shall, unless set aside or altered by the court, be final. It was his submission that the ruling delivered on 9<sup>th</sup> May 2025 which was neither reviewed nor appealed against, was final thus this Honorable Court is *functus officio*.

6. The second issue was whether the application dated 17<sup>th</sup> June 2025 amounts to an abuse of the courts process. He relied on the case of *Nderu V Ng'ang'a* [2023] KEELC 18204 (KLR) and Order 2 Rule 15 of the Civil Procedure Rules. He submits that the Applicant seeks to stay of execution of a ruling issued by this court on 9<sup>th</sup> May, 2025 pending the determination of a separate suit filed in a subordinate court which was instituted after delivery of the said ruling. It was his submission that the application was an abuse of the court process.
7. The final issue of costs, he relied on the case of *Supermarine Handling Services Ltd V Kenya Revenue Authority* [2010] eKLR and Section 27 of the *Civil Procedure Act*. He submits that the application should be dismissed with costs to the Respondent.

### **Analysis and Determination**

8. This court has considered the application, replying affidavit and submissions and is of the view that the main issue for determination is whether the application is merited.
9. In the case of *Owners of the Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd* [1989] KLR the court held as follows:

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
10. The Applicant claims that he filed a case against the Respondent in Milimani COMMSU No. E738 of 2025, *Pius Mbugua Ngugi V Githogori Harrison Associates Advocates LLP*. That this case arose from this court's decision of 9<sup>th</sup> May, 2025 where the court had entered judgment against the Applicant in terms of the Certificate of Taxation issued on 26<sup>th</sup> September, 2024. The Applicant seeks for stay of execution of the said judgment pending hearing and determination of Milimani COMMSU No. E738 of 2025.
11. Further, in the case of *M/S Lubullellah & Associates Advocates V N.K Brothers Limited* [2015] KEHC 6733 (KLR) the court held that:

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs”.
12. In the instant case, it is a fact that the Applicant did not file an appeal challenging the court's ruling of 9<sup>th</sup> May, 2025. Instead, he has filed a separate application in another court seeking stay of the execution



of the decree on the ground that there was an overpayment of the taxed sum which he sought recovery from the Respondent in vain.

Section 34(1) of the Civil Procedure Rules provides as follows:-

“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit.” [Emphasis mine]

13. It is this court’s view that the *Advocates Act* and the Advocates Remuneration Order, that the mandate of this court is only limited to entering judgment in favour of the Advocate upon issuance of a taxation certificate under Section 51 (2) of the *Advocates Act* and to handle references by Clients under rule 11. It is my view that the Applicant having exhausted his options, has attempted to file another application for stay in another court which is not permitted under the law. It is this court’s further view that purporting to consider the present application would be assuming jurisdiction which it does not otherwise have. For the above reasons, this court lacks the jurisdiction to hear and determine the client’s application. Consequently, the application dated 17<sup>th</sup> June, 2025 is dismissed with costs. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A.O.OMBWAYO**

**JUDGE**

