



Kariuki t/a Gacau Kariuki & Company Advocates v Mwangi (Miscellaneous Civil Application E574 of 2021) [2025] KEHC 13359 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E574 OF 2021**

PM MULWA, J

SEPTEMBER 25, 2025

BETWEEN

**EDWARD GACAU KARIUKI T/A GACAU KARIUKI & COMPANY
ADVOCATES ADVOCATE**

AND

DANIEL MAINA MWANGI APPLICANT

RULING

1. This ruling concerns the Notice of Motion dated 10th December 2021, wherein the Applicant seeks stay of execution of the *ex-parte* ruling and orders made on 23rd November 2021 and 6th December 2021 together with all consequential orders. He further prays that the said orders be set aside and/or reviewed, and that he be granted conditional leave to object to the Advocate–Client Bill of Costs and have it re-taxed.
2. The Applicant’s case is that the Advocate/Respondent obtained an *ex-parte* ruling on 28th September 2021 leading to a Certificate of Taxation issued on 1st October 2021. He contends that he was never served with the Bill of Costs, notices and pleadings, hence his failure to object or file a reference was not deliberate. He asserts that the Respondent only acted for him in preparing a sale agreement in 2018, that he has already paid legal fees, and that the process server’s affidavit on service is misleading. He further avers that the pleadings are malicious, the fees exaggerated, and the Bill of Costs should have been directed at both the purchaser and the seller. He also claims that the proclamation targeted tools of trade, thereby prejudicing his business which is servicing a loan.
3. The Respondent opposes the application through a Replying Affidavit sworn on 13th January 2022. He asserts that the Applicant has brought the matter frivolously, vexatiously, with unclean hands and in abuse of the court process. It is his position that he acted for the Applicant in the purchase of LR.



Nairobi Block 118/424 under an Agreement for Sale dated 10th August 2018, wherein the Applicant undertook to pay all legal and registration fees. The Respondent maintains that no fees were ever paid for the conveyance, the M-pesa transactions relied upon relate to other transactions, and that no receipt was ever issued for the conveyance in question.

4. The Respondent avers that a Bill of Costs dated 5th August 2021 was properly filed, duly served, taxed at Kshs. 210,450/=, and a Certificate of Taxation issued and subsequently adopted as a judgment and decree of the Court. The Applicant never filed any objection or reference, and under Section 51(2) of the *Advocates Act*, the Certificate of Taxation is final unless set aside. Execution, he argues, was therefore lawful. He urges the Court to dismiss the application, stressing that advocates cannot be denied their fees and that litigation must come to an end.
5. I have considered the Motion, affidavits, and rival submissions. The core issues for determination are whether the Applicant has demonstrated sufficient cause to set aside the orders of 23rd November and 6th December 2021, and whether leave should be granted to challenge the taxation of the Bill of Costs.
6. The law recognizes that a Certificate of Taxation, unless set aside or altered, is final as to the amount of costs (See Section 51(2) of the *Advocates Act*). However, that finality does not oust the Court's inherent jurisdiction to intervene where sufficient cause is shown, particularly where there is doubt as to service or where failure to challenge the taxation in time is not deliberate but attributable to lack of notice.
7. In the present case, the Applicant has consistently maintained that he was never served with the Bill of Costs, notice of taxation, or subsequent applications. The affidavits of service on record are contested, and given the serious consequences flowing from the taxation and subsequent decree, I am persuaded that the issue of service requires closer scrutiny than has been undertaken. The Court cannot, in the face of this dispute, shut out the Applicant without giving him an opportunity to ventilate his objection.
8. Moreover, the Applicant has raised triable issues as to whether the legal fees were already settled, whether the Advocate acted for both parties in the transaction, and whether the amounts taxed are exaggerated. These are issues that ought to be tested before the Taxing Officer on the merits rather than disposed of summarily.
9. While it is true that litigation must come to an end, justice demands that parties be accorded a fair hearing. To deny the Applicant an opportunity to challenge the Bill of Costs in the circumstances of contested service would amount to condemning him unheard, contrary to the dictates of Article 50 of the *Constitution*.
10. In the result, I find merit in the Motion. The orders made on 23rd November 2021 and 6th December 2021 together with all consequential orders are hereby set aside. The Applicant is granted conditional leave to file an objection and/or reference against the taxation of the Bill of Costs within fourteen (14) days from the date hereof. Execution is stayed pending determination of the said objection.
11. In the interest of justice, each party shall bear its own costs of the application.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Gathuthi h/b for Mr. Kinyua for Client/Applicant



N/A for Respondent

Court Assistant: Carlos

