



**Kilonzo & Co. Advocates v Board of Trustees National Social Security
Fund (Miscellaneous (Reference) Civil Application E121 of 2022)
[2025] KEHC 13354 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS (REFERENCE) CIVIL APPLICATION E121 OF 2022
PM MULWA, J
SEPTEMBER 25, 2025**

BETWEEN

KILONZO & CO. ADVOCATES APPLICANT

AND

**THE BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY
FUND RESPONDENT**

RULING

1. Before me for determination is the Chamber Summons application dated 14th February 2022 brought under Section 3A of the *Civil Procedure Act* and Rule 11(2) and (4) of the Advocates Remuneration Order. The applicant seeks to set aside the ruling delivered on 3rd February 2022 and to allow the Notice of Motion dated 30th October 2020.
2. The application is supported by the affidavit of Bonface Mapesa. The gist of the applicant's case is that the Notice of Motion dated 30th October 2020 sought to amend the Bill of Costs dated 27th January 2005. The said application was dismissed by a ruling dated 3rd February 2022 on the ground that the applicant had not advanced reasons for the inordinate delay. The applicant now contends that the omission arose from failure to include dates relating to services rendered, that the amendments are bona fide and not intended to introduce a new cause of action, and that no prejudice would be occasioned to the Respondent. Reliance was placed on Order 8 Rule 3 of the Civil Procedure Rules which permits amendments of pleadings.
3. The application is opposed. The Respondent filed Grounds of Opposition dated 8th April 2022 and a Replying Affidavit sworn on 12th April 2022 by Austin Ouko, its acting General Manager. The Respondent's position is that the application is frivolous, misconceived, and an abuse of the court



process. It is argued that the matter is res judicata as the application for amendment was already dismissed on 3rd February 2022. Further, that the present application has been improperly framed as a reference under Rule 11(2) and (4) of the Advocates Remuneration Order, yet there has been no taxation of the Bill of Costs. According to the Respondent, the proper recourse would have been an appeal. It was contended that the applicant has resorted to tactics meant to delay the taxation of a Bill of Costs that has been pending since 2005, and the application should therefore be dismissed.

4. Both parties filed written submissions. The applicant's submissions are dated 14th February 2023, while the Respondent's submissions are dated 1st March 2023.

Issues for determination

5. Having considered the application, affidavits, rival submissions and the record, the issues that commend themselves for determination are:
 - i. Whether the application is properly before this Court under Rule 11 of the Advocates Remuneration Order;
 - ii. Whether the doctrine of res judicata applies;
 - iii. Whether the applicant has made a case for setting aside the ruling of 3rd February 2022.
6. Rule 11(2) and (4) of the Advocates Remuneration Order sets out the procedure for a party to object to the decision of a taxing officer. The objector is required to give notice to the taxing officer and thereafter file a reference to a judge. The rule presupposes the existence of a taxation and a decision rendered thereon. In the instant matter, it is not in dispute that no taxation has been undertaken and therefore no decision of a taxing officer exists to be challenged.
7. The ruling of 3rd February 2022 concerned an interlocutory application seeking leave to amend the Bill of Costs. That ruling cannot, in law, be the subject of a reference under Rule 11, which is strictly limited to objections arising from taxation. In my view, the invocation of Rule 11 in the present circumstances is not only irregular but misconceived. I agree with the respondent the correct recourse for the applicant, if dissatisfied with the ruling, was to prefer an appeal.
8. Section 7 of the *Civil Procedure Act* codifies the doctrine of res judicata. The essence of the provision is to bar parties from re-litigating matters that have been directly and substantially in issue in previous litigation between the same parties, where such matters have been conclusively determined.
9. The record shows that the application dated 30th October 2020, seeking amendment of the Bill of Costs, was heard and dismissed by this Court in the ruling of 3rd February 2022. The applicant, instead of appealing, has filed the present application seeking to revisit the same issues under the guise of a fresh application. This falls squarely within the mischief of res judicata. The Court of Appeal in *Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others* [1996] eKLR emphasized that once a matter is finally decided by a competent court, it cannot be reopened merely because one party has found new arguments or wishes to reframe their case. Similarly, in *E.T. v Attorney General & Another* [2012] eKLR, the Court observed that res judicata is a doctrine of general application aimed at bringing finality to litigation.
10. Applying these principles, I find that the present application is barred by the doctrine of res judicata. To entertain it would amount to reopening a matter conclusively decided in the ruling of 3rd February 2022.



11. On whether the applicant has made a case for setting aside the ruling of 3rd February 2022, the law is settled that a court has inherent jurisdiction to set aside its orders, but such jurisdiction is exercised sparingly and only where sufficient cause is shown. Circumstances such as fraud, mistake, misrepresentation, or lack of jurisdiction may justify the exercise of this power. The Court of Appeal in *Patel v E.A. Cargo Handling Services Ltd* [1974] EA 75 laid down the guiding principles that discretion to set aside must be exercised to avoid injustice but not to assist a party who has deliberately sought to obstruct or delay the course of justice.
12. In the present matter, the applicant has not demonstrated any fraud, error, or jurisdictional defect in the ruling of 3rd February 2022. The grounds advanced are essentially a repetition of arguments already raised and determined. The Court cannot sit on appeal over its own decision. The proper avenue for the applicant, if dissatisfied, was to seek redress through the appellate process. To allow the present application would not only undermine the principle of finality of litigation but also amount to an impermissible review of a matter already conclusively determined.

Disposition

13. In light of the foregoing, I find that the Chamber Summons dated 14th February 2022 is devoid of merit. The same is dismissed with costs to the Respondent.

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

PETER M. MULWA

JUDGE

In the presence of:

Mr. Ndolo h/b for Ms. Kilonzo for Applicant

Mr. Wakhisi h/b for Mr. Mogere for Respondent

Court Assistant: Carlos

