



REPUBLIC OF KENYA



KENYA LAW
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**Owiti, Otieno & Ragot Advocates v Odiero (Miscellaneous Application
E092 of 2022) [2025] KEHC 13915 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E092 OF 2022**

**JM OMIDO, J
SEPTEMBER 25, 2025**

BETWEEN

OWITI, OTIENO & RAGOT ADVOCATES APPLICANT

AND

HEZBORN OMBWAYO ODIERO RESPONDENT

RULING

1. The Advocate's application dated 4th November, 2022 is expressed to be brought under Section 51(2) of the [Advocates Act](#), Cap 16 Laws of Kenya and seeks the following orders:
 - a. That the certificate of costs issued herein in respect of the taxation order made on 13th October, 2022 for the sum of Ksh.677,790.08/- be adopted as the judgement of this Honourable Court, together with interest thereon at 14% per annum from 25th September, 2021 until payment in full.
 - b. That the costs of this application be borne by the Client/Respondent.
2. The grounds upon which the application is premised is that the Client retained the services of the Advocate to act for him in Kisumu HCJR No. 16 of 2019 Republic v Permanent Secretary Ministry of Defence & others, ex parte Hezborn Ombwayo Odiero and that the Advocate professionally executed the Client's instructions in the said matter.
3. That subsequently, the Advocate filed an Advocate/Client bill of costs and the same was on 13th October, 2022 taxed at Ksh.677,790.08/- and a certificate of costs issued to that effect, which the Advocate states he is entitled to together with interest. The determination upon taxation was not challenged by the Client.
4. The application is supported by the affidavit of Jude Ragot, Advocate sworn on 4th November, 2022. The supporting affidavit restates and expounds on the above grounds.



5. The Client resisted the application and to that end filed a replying affidavit which he swore on 26th September, 2023.
6. The grounds upon which the Client opposes the Advocate's motion are that the Advocate instituted and prosecuted Kisumu HCJR No. 16 of 2019 Republic v Permanent Secretary Ministry of Defence & others, ex parte Hezborn Ombwayo Odiero without the Client's instructions and that as such, there was no fiduciary relationship between the two parties.
7. The Client further proffers the position that he filed an application dated 4th September, 2023 in which he seeks leave of the court to allow him to issue a notice to the Deputy Registrar/Taxing Master objecting to the taxation in its entirety, out of time.
8. I have considered the application, the affidavit in support thereof, the replying affidavit and the respective submissions. When the matter came up before me on 10th March, 2025, the Client, who is acting in person, orally addressed the court and stated as follows:

“My name has been misspelt. In fact I am not the one. I have several documents which indicate several names”
9. My view is that other than the grounds raised in opposition to the application, the Client was by so stating raising another ground.
10. From the material before me, the issues abound for my determination are as follows:
 - a. What is the effect of misspelling the Client's name, if any?
 - b. What is the effect of the Client's denial that he never gave the Advocate instructions, if any?
 - c. What is the effect of the Client's application dated 4th September, 2023 seeking leave of the court to allow him to issue a notice to the Deputy Registrar/Taxing Master objecting to the taxation in its entirety, out of time, if any?
 - d. Subject to the above, whether this court should adopt the certificate of costs as the decree of this court?
 - e. A determination as to costs.
11. I will deal with the first two issues together. In respect of the first issue, the Client states that his name is misspelt in the documents before me. I note indeed that some documents refer to the Client as Hezborn while others have the names Hezron and Hezbon. He is referred to as in some documents as Ombwayo and in others as Omwayo.
12. In respect of the second issue, he states that he never instructed the Advocate to file Kisumu HCJR No. 16 of 2019 Republic v Permanent Secretary Ministry of Defence & others, ex parte Hezborn Ombwayo Odiero on his behalf.
13. It is however instructive from the material before me that the Client was successful in the Judicial Review matter as the judgement entered therein was in his favour. He states as follows in paragraph 7 of his replying affidavit:

“7. That the application herein was filed in bad faith as the Applicant is determined to unfairly justify his ill-motive and intentions to retain the whole



or a substantial amount of my decretal sum of Ksh.5,000,000/- due from the judgement in Kisumu HC Civil Petition No. 9 of 2012.”

14. From the above paragraph, what one can deduce is that the Client admits that he was the Petitioner in the Judicial Review matter and that the Advocate represented him, hence his claim that there is money that the Advocate wishes to retain as fees.
15. As for the purported misspelling of his name, he readily acknowledges in paragraph 1 of the replying affidavit, that he indeed is the Client or Respondent. He does not deny that the signature on the affidavit is his. Placing reliance on the misspelling of names is in my view, in the circumstances, splitting hairs.
16. With respect to the third issue which concerns the effect of the Client’s application dated 4th September, 2023 seeking leave of the court to allow him to issue a notice to the Deputy Registrar/Taxing Master objecting to the taxation in its entirety, out of time, if any, my observation is that the application was filed about two years ago and no explanation has been given by the Client why the same remains unprosecuted over that lengthy period of time.
17. Moreover, as there is no stay order applied for or obtained to inhibit further proceedings from being taken in this matter, nothing prevents the Advocate from proceeding with his instant application.
18. Having determined the issues before me as above, I find that the Advocate’s application by motion on notice dated 4th November, 2022 is merited and I proceed to allow it in the following terms.
 - a. Judgement is entered for the Advocate against the Client for Ksh.677,790.08/- as per the certificate of costs dated 13th October, 2022.
 - b. Simple interest on the above amount of Ksh.677,790.08/- shall accrue at 14% per annum from 13th October, 2022.
 - c. On costs, *Section 27* of the *Civil Procedure Act* dictates that the same ought to follow the event unless for reasons to be stated the court orders otherwise. Considering that the parties herein were erstwhile in a fiduciary relationship, I will make no orders as to the costs of the application.

DELIVERED (VIRTUALLY), DATED AND SIGNED THIS 25TH DAY OF SEPTEMBER, 2025.

JOE M. OMIDO

JUDGE

For The Advocate: No Appearance.

For The Client: No Appearance.

Court Assistants: Mr. Ngoge.

