



REPUBLIC OF KENYA



**KENYA LAW**  
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**Qureshi & another v Parkar & 2 others (Civil Suit E610 of 2007)  
[2025] KEHC 13512 (KLR) (Civ) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13512 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL SUIT E610 OF 2007**

**JN MULWA, J**

**SEPTEMBER 25, 2025**

**BETWEEN**

**NAIL-A QURESHI ..... 1<sup>ST</sup> PLAINTIFF**

**KAILESH JOBANPUTRA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**RAFIQUE PARKAR ..... 1<sup>ST</sup> DEFENDANT**

**NAJI SAID ..... 2<sup>ND</sup> DEFENDANT**

**AGAN KHAN HEALTH SERVICE KENYA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Judgment in this suit was delivered on 4/06/2025 by the Hon. Alex Muteti J it the sum of Kshs. 157 million in damages for the plaintiff against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants jointly and severally plus costs and interest.
2. Being aggrieved by the said judgment, the 3<sup>rd</sup> Defendant, Agakhan Health Services Kenya moved the court under certificate of urgency dated 13/06/2025 informing parties and the court that they would no longer be on record representing the 3<sup>rd</sup> Defendant upon which the defendant appointed the law firm of NBMA to represent them n post judgment proceedings. The motion before me is in respect of the above application by the intended law firm, NBMA Advocates.

**Application Dated 13/06/2025**

3. Based on the provisions of Order 9 Rule 9 (CPR) of the Civil Procedure Rules and Article 50 of the [Constitution](#); the Applicant (3<sup>rd</sup> Defendant) sought orders that;



1. Spent
2. That the firm of NBMA Advocates LLP be granted leave to come on record for the 3<sup>rd</sup> Defendant in place of the firm of Mohammed & Samnakay after Judgment..
4. In its supporting affidavit sworn by one Catherine Kariba an Advocate and legal Officer of the Defendant on 13/06/2025, the Applicant posited that her law firm was no longer going to continue acting for it by letter and email; that upon search information, it appointed its new law firm to protect its interests in the proceedings, and urged the court to allow the application.
5. By a Notice of Grounds of opposition dated 25/06/2025, the former Advocate Mohamed & Samnakay Advocates opposed the application on its face and supported by a lengthy replying affidavit sworn by a partner in the legal firm that the application is defective for failure to disclose the identity of the applicants or the respondent that the Advocates who purport to seek orders of the court are not party to the proceedings and lacks locus standi to represent them in post judgment proceedings as leave is yet to be granted by the court.
6. The Respondents stated that they would have no objection to the intended advocates being granted leave on condition that the advocates legal fees is paid and further that it was negligent on the part of the client to instruct it to cease acting for it in the matter post judgment without first resolving its issues of pending legal fees in this matter and in other matters leaving the client (3<sup>rd</sup> defendant) vulnerable, despite having no way of stopping the client from its choice of appointment of the new advocates.
7. A summary of the depositions in the replying affidavit is as hereunder:-

That there is a notice of appeal against the courts judgment filed and dated 4/06/2025 and a memorandum of appeal as well as preparation of an application for stay of execution of the judgment pending appeal but the 3<sup>rd</sup> defendant (client) became uncooperative and declined to sign the supporting affidavit (annexed as “ZM 1, 2,)
8. That upon request by the client to give consent by an email dated 10/06/2025 – marked as “ZM3” the advocates to appointment of the new advocates only on one condition of payment of fees due and owing to the law firm in the matter as well as in other matters in the sum of Kshs. 11,917,783 – marked as “ZM4” for fear that its fees may never be paid if it consented to the request.
9. The Respondent further posited that due to lack of cooperation as stated in the replying affidavit, it had no choice but to continue with further work in the matter for the client, and went ahead to inform all parties in the matter of the new developments the advocates requested the parties advocates to effect service of court process directly to the 3<sup>rd</sup> Defendant, the client.
10. On 26/06/2025 on the hearing of garnishee application dated 17/06/2025 by the plaintiffs, the court issued an order of stay of execution of the court’s decree against the defendants pending hearing and determination of the application under review dated 13/06/2025.

Parties filed their rival submissions on the application.

#### **Applicants (NBMA) Advocates submissions dated 21/07/2025**

11. For the reasons that the 3<sup>rd</sup> Defendant is currently unrepresented, for main two reasons; outstanding legal fees and lack of locus standi as provided under Order 9 Rule 9 CPR, it is their submission that the 3<sup>rd</sup> Defendant wishes to appoint advocates of their own choice and having opted out, the outgoing advocates cannot continue to act for it; hence filing of the instant application.



12. The Applicant resorted to two undertakings in respect of the legal fees issued by Jubilee Insurance Company Ltd marked as Exhibit “A” by the CEO confirming that its taxed legal fees will be paid and that in essence, failure to accept the undertaking and the Bank Guarantee is holding the client at ransom over unrelated matters.
13. On the matter of lack of locus standi, the Applicant submits citing the case of *Duale Mary Anne Gurre v. Amina Mohamed Mohamoud & Another* [2014] eKLR that an advocate is the agent of the party who instructs him and such instructing client as principal continues to have the obligation and the duty to ensure that the agent is executing the instructions and therefore the Applicant having been duly instructed by the client, and having filed the Notice of change of Advocates it is properly filed, and the allegation that NBMA is a non-party is devoid of merit.
14. It is further submitted that the legal way to payment of legal fees is to file a bill of costs for taxation in the manner provided at the Advocate Remuneration order and the *Advocates Act* at section 47 being a substantive safeguard to ensure that any claim for legal fees is subject to judicial scrutiny and qualification. Additionally, the Applicant submits that Rule 6 of the *Advocates Act* permits an advocate to accept security for remuneration and disbursements agreed upon, after taxation if not disputed, and therefore the former advocate’s demand of fees not taxed offends principles of transparency accountability and fairness.
15. For the foregoing, the Applicant seeks the court to find that the Respondent is only meant to frustrate the client and urge the court to allow the application as prayed.

#### **Submissions by the law firm of Ms. Mohamed & Samnakay Advocates**

16. By its submissions dated 14/07/2025, the Advocates rely on their grounds of opposition dated 25/06/2025 and the Replying Affidavit sworn on 27/06/2025 and the Preliminary Objection dated 27/06/2025.

The salient features are stated thereto; to urge that the application is incompetent, defective and incurably defective stating that NBMA is not a party as defined under Order 9 Rule 9 CPR, hence has no business filing the motion; that prior to the application under review, it has post judgment prepared an application for stay of execution, notice of appeal dated 4/06/2025 requested for provision of proceedings judgment and other documents all marked as Exhibit “ZM1” but which application the client failed to sign, adding that it fears to sign a consent to allow the applicant to come before its legal fees is paid.

17. At its submissions at Paragraph 18, the advocates submit that they would have no objection to appointment of NBMA as the new advocates for the client provided that either the advocates fees as demanded are first paid or the advocates are provided with a suitable bankers guarantee, on terms acceptable to the advocates for payment of the advocates said fees as demanded within 7 days of signing the said consent for change of advocates; but not by email.

#### **Analysis and Determination**

18. Order 9 Rule 9 CPR was intentioned to cure the mischief of parties to a suit from changing advocates and appointment of new advocates without payment of legal fees of the former advocates thus to protect the interests of the outgoing advocates.

In this matter, it has become very clear that the client (3<sup>rd</sup> defendant) intended to be represented by a different law firm post judgment; and on the appeal proceedings upon the Notice of Appeal having been filed.



19. In the case of *Koskei v. Langat* (Environment and land Appeal E005 of 2021) KEELC 21958 (KLR) it was held that the requirement under Order 9 Rule 9 is to prevent mischief of litigants sacking their advocates at the execution stage to avoid payment of fees; but not to prevent a party from being represented by Advocates of their choice.

20. In respect of the matter before this court, the client has expressed willingness to pay legal fees in respect of work it had undertaken in this suit; but not be held hostage until it pays for legal fees for “other work” it had purportedly done for the client.

That being the only issue for this courts consideration and determination ; the court finds that there is a bank guarantee issued by the client’s insurer Jubilee Insurance Company , in which it undertakes to pay the taxed costs in this matter to the outgoing advocates, M/S Mohamed & Samnakay Advocate Exhibit “A”.

21. Upon consideration, there is nothing provided by the former Advocates to doubt that Jubilee Insurance Company Ltd will not be able to pay the taxed costs or at all;

Indeed, the Advocates (Paragraph 18 of Replying Affidavit) is clear that the only Proviso it gives on its legal fees is that either the Advocates fees as demanded are first duly paid or they are provided with a suitable bank guarantee on terms acceptable to the advocates for payment within 7 days of signing the consent for change of advocates.

22. In the court’s view, the above proviso would have been complied with if there was drawn on Advocate/ Client bill of costs, taxed, and a certificate of taxation issued by the taxing officer of the court.

I want to believe that the client would have had no difficulty or objection if the procedural imperatives above captured at Section 47 of the *Advocates Act*- to deliver a bill of costs and to pay up debts and delivery of documents had been complied with by the Respondent Advocate.

23. The above process in my considered view, cannot wait up and until it is done, for a party who is facing execution proceedings, or to appeal to the higher court, thus once security has been offered by a suitable bank as is the case in this matter other acceptable form from the client, the clients new choice of advocates should be allowed to come on record to protect the clients interest.

24. To that end therefore, I am persuaded that the application dated 13/06/2025 is merited and must be allowed.

25. The outgoing advocates, may proceed to raise their Advocate-client bill of costs, only in respect of this matter, get it taxed upon which the certificate of taxation may be issued and served upon the client for settlement by the insurer, who has provided a bank guarantee to settle the Advocates fees as may be found due upon taxation

The upshot is that the law firm; NBMA is granted leave to come on record for the 3<sup>rd</sup> Defendant in place of the law firm M/S Mohamed & Samnakay Advocates; with no order on costs.

26. The applicant has brought to this court’s attention that the Court of Appeal Civil Appeal No. 354 of 2025 in the matter of *Dr. Ratiq Parker v. Naila Quaresh Kailesh Jobanputra Dr. Naji Said & Agakhan Health Services Kenya* arising from this suit has since issued an order of stay of execution of the judgment in this case pending hearing and determination of the appeal.

27. I thought it necessary to bring the above development to parties in this suit.

Orders accordingly.

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



.....  
**JANET MULWA.**  
**JUDGE**

