



Gikaria t/a Anthony Gikaria & Co. Advocates v Mundia & others (Miscellaneous Application E006 - E013 of 2024) [2025] KEELC 6760 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6760 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
MISCELLANEOUS APPLICATION E006 - E013 OF 2024**

**LN MBUGUA, J
OCTOBER 1, 2025**

BETWEEN

**ANTHONY GIKARIA T/A ANTHONY GIKARIA & CO.
ADVOCATES APPLICANT**

AND

MARGARET WANJIRU MUNDIA & OTHERS RESPONDENT

RULING

1. This ruling relates to a series of 8 miscellaneous suits running from E006-E013 all of 2024.
2. The background to these suits is that there was a Succession Case no. 37 of 1990 at Nyeri High Court relating to the estate of one Mundia Kigathi(Deceased) which culminated in a Certificate of a Confirmation of a Grant dated 20.5.2019 in which parcel GakawaGithima Block1/Burguret/881 (hereinafter, the Land) was to be shared amongst the beneficiaries of the deceased. A rectified Grant dated 4.8.2021 has been tabled before this court.
3. The advocate avers that he received instructions from the personal representatives of the estate of the deceased to subdivide the land and process titles in the name of the beneficiaries. He apparently did the work and thereafter filed an advocate-client bill of costs on 22.7.2024 (dated 15.7.2024) through a series of miscellaneous suits numbers E006-E013 all of 2024. Vide the taxing masters ruling of 16.12.2024, the bill of costs were taxed at Kshs.101 949 for each file and the certificate of costs were thereafter issued on 30.1.2025. The taxing masters ruling forms the crux of the current dispute where the applicants/ tax respondents contend that there was no advocate -client relationship to warrant the taxation of the bill of costs.
4. For ease of reference and in respect of the current applications, the tax respondents will be identified as the applicants, while the advocate will be identified as such, the advocate.



5. The Applicants approached the Court by way of Chamber Summons under Rule 11(2) of the Advocates' Remuneration Order dated 10.3.2025 challenging the ruling delivered by Hon. Lisper Gakii Nyaga, Deputy Registrar delivered on 16.12.2024 in respect to the Respondent's Advocate and Client Bill of Costs dated 15.7.2024. In all the 8 chamber summons applications, the applicants have sought similar orders as follows:
 - i. Enlargement of time to enable the Applicants to file an objection to the reference as against the decision of the Taxing Master.
 - ii. Leave for the firm of Charles G. Mbau & Co Advocates to come on record for the Applicants and thereafter allow the Applicants to file a Preliminary Objection to the effect that there was no Advocate-Client relationship between the parties.
 - iii. A stay of execution of the ruling and orders of the Deputy Registrar taxing the Advocate-Client Bill of Costs at Kenya Shillings 101,949/- pending the hearing and determination of the applications.
 - iv. That the decision of the Deputy Registrar (taxing master) be set aside or varied and that the same be remitted for taxation before another Taxing Master for directions.
 - v. Costs of the applications.
6. The applications were filed alongside Notices of Preliminary Objections where the applicants have reiterated the averments set out in their applications, adding that the Bill of Costs should have been filed at the Environment and Land Court in Nyeri and not Nanyuki because the relevant succession proceedings were conducted at Nyeri Law Courts.
7. By and large, the suit E006 OF 2024 will form the foundation of the court's rendition in the other suits. In the said suit, the applicant is one Michael Muriithi Mundia suing as the personal representative of the estate of Margaret Wanjiru Mundia DCD. The deponent has availed supporting and supplementary affidavits to the application. He contends that Margaret Wanjiru Mundia died on 6.12.2015 and as such, was in no position to be sued or to give any instructions to any advocate hence the suit as against them was untenable as the Applicant herein was only granted letters of administration ad litem on 23.1.2025 hence the delay in filing the Notice of Preliminary Objection and the Reference.
8. He deponed that the Taxing Master erred in failing to consider that the Advocate only had instructions from two out of three personal representatives of the deceased and that the Applicant is from the family that was never involved in instructing the Advocates, thus no Advocate-Client relationship between the Applicant and the advocate existed. The deponent contended that in the Respondent's replying affidavit he claims to be owed by the estate of Mundia Kigathi (deceased) whose personal representatives are Gerald Murage Mundia, David Mwangi Mundia and Mary Kirigo Mundia who are also the instructing parties. Thus, these are the persons who should have been sued instead of going after strangers to that contract.
9. He stated that himself and his siblings are personal representatives of the Estate of Margaret Wanjiru Mundia (deceased) and not the estate of Mundia Kigathi (deceased) hence they do not fit the definition of a clients under the *Advocates Act*. He argued that the advocate ought to have given them the rectified Grant dated 4.8.2021 so that they could sit down as a family and organize the transmission of the properties instead of doing it for them without their consent.



10. In support of his case, the applicant annexed copies of the petition for grant of letters of administration ad litem for the estate of Margaret Wanjiru Mundia, limited grant of letters of administration ad litem thereof, as well as the letter of instructions and the impugned ruling.
11. In his submissions dated 3.6.2025, the Applicant reiterated the averments set out in the application, adding that the court has jurisdiction to deal with a reference emanating from the decision of the Taxing Master. He argues that the Advocates Remuneration Order does not apply when it is alleged that an Advocate acted without instructions.
12. The Applicant relied on the case of Corporate Insurance Company Ltd v Advocates (Miscellaneous Application 033 of 2020) [2022] KEHC 545 (KLR) (7 Jube 2022) (Ruling) and Joreth Limited v Kigano & Associates (2002)1EA.
13. The advocate opposed the application vide his Replying Affidavit sworn on 5.5.2025. He avers that the application was filed out of time, which ought to be 14 days after the delivery of the ruling. Further, the Applicant sought leave for enlargement of time within the same Chamber Summons application that was challenging the ruling. He averred that the application was brought in bad faith and is an abuse of the court process. He added that the Applicant is estopped from raising a Preliminary Objection at this stage since he waived the opportunity at the onset of the taxation proceedings.
14. Relying on the maxim that equity is not for the indolent but for the vigilant, the advocate stated that the court records confirms that the Applicant was aware of the taxation proceeding prior to appointing M/S Charles G. Mbau & Co. Advocates as he had instructed M/S Santa Munga & Co. Advocates to represent him, and the latter firm served the Respondent's firm with a replying affidavit sworn by the Applicant on the 25.10.2024 even though the same was not formally filed in court in the CTS.
15. On the averment that the bill of cost ought to have been filed in Nyeri, the advocate averred that the issue was not raised before the taxing master. Moreover, the succession proceedings in Nyeri had nothing to do with the taxation proceedings relating to the work that his law firm did to process and obtain titles in the name of the applicants pursuant to the mode of distribution stipulated in the Certificate of Confirmation of Grant issued on 20.5.2019.
16. He argued that secondary matters touching on the assets bequeathed to the beneficiaries and taxation proceedings should be filed at the nearest court with territorial jurisdiction and that the nearest court to Burguret, the subject of the taxation is Nanyuki and not Nyeri.
17. The Advocate deponed that his law firm was duly instructed and retained by all the surviving legal administrators and personal representatives of the Estate of the deceased vide the instruction letter dated 1.7.2021, which instructions entailed; To attend to the conveyance/transmission of L.R. no. Gakawa/Githima Block 1/Burguret/881, the mother parcel, to the beneficiaries of the deceased estate. To this end, the Applicant even executed all the required transmission documents prepared by his law firm. He produced copies of the letter of instructions, the transmission documents, a search certificate of the mother parcel and the Applicant's title to support his arguments.
18. The advocate urged the court to dismiss the Chamber Summons application with costs and enter judgment in his favour for the taxed and certified costs as sought in the Notice of Motion application dated 20.2.2025. Otherwise, the Applicant be ordered to deposit at least 50% of the taxed and certified costs in a joint interest earning bank account held between the Applicant's and the advocate's respondent's law firms pending fresh taxation to ensure due performance of the decree in the event that it becomes binding on the Applicant. The Advocate further urged the court to order the Applicant to pay him throw away costs of Kenya Shillings 25,000/- as expenses incurred in prosecuting his Advocate & Client Bill of Costs up to the present stage of execution of the taxed and certified costs.



19. In his submissions dated 20.6.2025, the advocate contends that matters of taxation fall within the preserve of a Taxing Officer although a Judge can also undertake taxation but the general principle is that where a Judge finds that the Taxing Officer committed an error of principle, the Judge should pinpoint it and remit the Bill of Costs for re-taxation by a different Taxing Officer. He argued that in this case, there are no unique, exceptional or justifiable circumstances that merit interfering with the Taxing Officer's decision. He relied on the cases of *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR and *Arthur v Nyeri Electricity Undertaking* [1961] EA 497.
20. The advocate argued that the fact that he rendered professional services in favour of the Applicant and obtained title in his name has not been contested adding that the Applicant was a client of the advocate within the meaning of Section 2 of the *Advocates Act*.

Determination

21. I have considered all the pleadings filed herein as well as the rival submissions. It is noted that although the applicant is seeking leave to file an objection by way of a reference as well as a Preliminary Objection, he has gone ahead to file the Preliminary Objection simultaneously with the application. He has also submitted that the court has jurisdiction to deal with a reference emanating from the taxing master. Thus, the arguments proffered by the rival parties rest on the validity of the ruling delivered by the taxing master on 16.12.2024.
22. The applicant has in essence proffered a mixed grill, arguing his Preliminary Objection and reference while at the same time seeking leave to file the said pleadings. The provisions of Article 159 (2) of *the Constitution* however, mandate this court to administer justice without undue regard to procedural technicalities. Seeing that the advocate has comprehensively responded to the issues raised by the applicant, the court will proceed to deal with all the issues raised herein.
23. The issues for determination turns on two points; Whether the prayer for enlargement of time to file the objection is merited, and whether the decision of the taxing master dated 16.12.2024 should be allowed to stand.
24. On enlargement of time, the provisions of Rule 11 (2) of the Advocates Remuneration Order (ARO) gives 14 days within which an objection should be lodged before the Judge against the ruling of the taxing master. To this end, the court has powers and discretion to enlarge time fixed for filing an objection to the Judge as provided under rule 11 (4) of the ARO and as was stated in the case of *Adan Guyo T/A Monsille Medical Centre v Daniel Gikunda Anampiu T/A Gikunda Anampiu Co. Advocates* (2011) KEHC 3512 (KLR), *Nyakundi & Company Advocates v Kenyatta National Hospital Board* [2005] KEHC 2338 (KLR).
25. In *Twiga Motors Limited v Dalmas Otieno Onyango* [2015] KEHC 8106 (KLR), the court stated that;

“The time limits in Rule 11 of the Advocates Remuneration Order have been put there for a reason”.
26. What resonates from the legal framework and the case law is that whereas courts have the mandate to enlarge time where the period for lodging an objection has lapsed, an applicant ought to advance credible reasons for the delay.
27. In the case at hand, the Applicant has availed copies of the Petition for Grant of letters of administration ad litem in respect of the estate of Margaret Wanjiru Mundia dated 12.1.2025, of which the said letters were issued on 23.1.2025. On the face of it, one would conclude that the applicant had a genuine justification for not raising the objection on time. Not so in this case.



28. To start with, the applicant's prayer no. 3 is leave for the firm of Charles G. Mbau & co. to come on record for him. He has somehow and conveniently left out the fact that the advocate is taking over from another advocate. A perusal of the digital file (CTS) reveals that on 10.3.2025, the applicant filed a notice of change of advocate from Santa Munga to Charles Mbau advocate. This buttresses the averments of the advocate that the applicant had legal representation when the bill of cost was filed.
29. What more, advocate Munga appeared in court for the applicant on 2.9.2024, where he sought 14 days to file a response to the bill of costs. His wish was granted, but come the next court date of 7.10.2024, advocate Munga stated that he needed 14 more days. He was then given a last chance of which taxation was fixed on 28.10.2024. Come this date and directions were given for the filing of submissions again in the presence of Mr. Munga. The matter was given the date of 2.12.2024, but there was no appearance for the applicant. If Margaret died on 6.12.2015 as alleged by the applicant, what then prevented the applicant from raising these issues at the onset of the taxation proceedings.
30. Of great importance is the fact that the letter of instructions dated 1.7.2021 related to the distribution of the properties of the deceased KIGATHI MUNDIA and not Margaret Wanjiru Mundia. Further, it is apparent that all along, the issue of the death of one Margaret Wanjiru Mundia did not feature anywhere until the petition for grant of letters of administration ad litem was filed in January 2025, long after the distribution of the estate culminating in the issuance of titles in respect of the land in question in year 2022. To this end, I find that the Certificate of the confirmed Grant dated 20.5.2019 bears the name of one Margaret Wanjiru Mundia who is listed as a beneficiary of Kigathi Mundia's land. Is it that by then, the Applicant did not know of the death of Margaret? Certainly not.
31. An averment has been made by the advocate that the applicant even signed the transmission documents and has availed the same dated 22.3.2021. This gave rise to the generation of titles in the names of the various beneficiaries of the estate of the deceased Mundia Kigathi. The applicant has not rebutted this averment.
32. In the case of re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR, the court stated that;

“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”.
33. As rightly submitted by the advocate, the applicant was well aware of the ongoing transactions that culminated in the generation of new titles in regard to the subdivision of the 24 acres out of the land in question by the time the taxation proceedings commenced. The applicant has not in anyway cast aspersions on the exercise of the subdivision and transmission of the parcels to the beneficiaries, he has not denounced the advocate who was appearing for him before the taxing officer, he doesn't give any tangible explanation as to when he came to learn of the existence of the letter of instructions dated 1.7.2021, he does not give any explanation as to why the death of Margaret Wanjiru Mundia was not disclosed in the succession proceedings or the nexus between Margaret, the deceased with the letter of instructions.
34. There is no rocket science needed to discern that the issue of getting a Grant ad litem for Margaret in year 2025, coming after the process of subdivision and registration of the land in favor of the beneficiaries is nothing but a red herring intended as rightly put by the advocate at “splitting hairs



- and muddling the waters..” so as to avoid the responsibilities that come about with the distribution of the estate, in this case, the subdivision of the mother title and eventual transmission of the resultant parcels to the beneficiaries.
35. This far, I find that there are no valid reasons as to why the Objection was not filed on time. Thus, the prayer for enlargement of time to file a reference and a Preliminary Objection is not merited. In the circumstances, the arguments proffered by the applicant in support of his preliminary objection and a reference must fall by the way side.
 36. Needless to note that even if the reference and or the preliminary objection were properly filed, they would not have seen the light of the day as the issues raised by the applicant were not made a subject of contest before the taxing officer, despite the fact that the applicant sought for time severally to file his pleadings (response) in that court, but ended up not doing so.
 37. The findings made by this court in respect of case No.E006 of 2025 applies in all the series E007-E013 OF 2024. For the record, the applicant in E007 OF 2024 is one James Kinyua Mundia, a beneficiary of the estate of Kigathi as per the rectified grant. He signed the transmission form at no 18 where his ID card is 9669565 and was issued with a title on 20.1.2022. In the case E008 OF 2024, the applicants are Margaret Wanjiku MUNDIA, John Mundia Wanjiku and Aurelia Gathoni Wanjiru The three signed the transmission form at numbers 10, (ID NO. 29XXXX), 11(ID NO. 22XXXX) and 12 (ID NO. 22XXXX) and a title was issued in their joint names on 20.1.2022.
 38. In E009 OF 2024, the applicants are Peter Githinji Njoki and Patrick Mundia Njoki.They have similarly appended their signatures on the transmission forms at numbers 13 and 14 next to their identity card numbers. A title was issued in their joint names on 20.1.2022. In E10 OF 2024, the applicants are John Mundia Wachuka, Caroline Wanjiku Wachukaand Joseph Kigathi Mundia.They signed the transmission forms at numbers 10, 16 and 17 next to their identity cards and a title was issued in their joint names on 20.1.2022.
 39. In E011 OF 2024, the applicant is MMary Wangechi Mundia who signed the transmission forms at number 21 next to her identity card. She was similarly issued with a title on 20.1.2022. In E0012 OF 2024, the applicant is Michael Muriithi Mundia who signed the transmission form at no. 20 next to his identity card. His title was issued on 20.1.2022. Finally, in case no. E013 of 2024, the applicant is Bernard Ngatia Mundiawho signed the transmission form at number 19 next to his identity card. Just like all the other applicants, he was issued with a title on 20.1.2022.
 40. All the supporting affidavits of the aforementioned applicants are the same, word for word, save their identification. At paragraph 3 in the various supporting affidavits, they claim that : “I am a beneficiary of the estate of Margaret Wanjiru Mundia who died on 16.12.2015 and as such, I was in no position to give any instructions to any advocate....” . However, and as already pronounced by the court, the instructions related to distribution of the estate of Kigathi Mundia,of which all the applicants signed the transmission forms to facilitate the distribution of the land in question. To make matters worse, the applicants have not distinguished the person known as Margaret Wanjiru Mundia, the one who has sworn an affidavit in E008 of2024 from Margaret Wanjiru Mundia, the one who is apparently deceased.
 41. Thus, just like in the case E006 OF 2024, these other applicants have not proffered any reasons for not filing their objections on time.
 42. Further, even if their References and or the Preliminary Objections were properly on record, they similarly would not have seen the light of the day in view of the fact that the instructions of 1.7.2021 were given by the joint administrators of the estate of Kigathi Mundia. Those are the parties who



had the legal mandate to distribute the estate in terms of the provisions of Section 83 of the [Law of Succession Act](#): See In re Estate of Gakunyua Ndegwa alias Gakinyua Ndegwa (Deceased) (Succession Cause 73 of 2015) [2022] KEHC 12463 (KLR) (17 August 2022) (Ruling) Neutral citation: [2022] KEHC 12463 (KLR).

43. In the end, I term the applicants as dishonest persons whose quest to escape the responsibilities of the subdivision of the mother title must fail. Nevertheless, the court has no reason to deny the applicants the legal representation of their choice.
44. In conclusion, the court proceeds to give the following orders;
 1. All the Chamber Summons Applications as well as the Preliminary Objections dated 10.3.2025 in the 8 miscellaneous suits (E006 OF 2024- E013 OF 2024) are found to be unmerited and are hereby dismissed with costs to the advocate in each file.
 2. The firm of Charles G Mbau is however granted leave to come on record for the applicants.
 3. The court directs that the advocates application dated 20.2.2025 be set down for hearing.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 1ST DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Nancy CA

Antony Gikaria, the Advocate

Jogo H/B for Mr. Mbau for the Applicants

