



Kombo & another (Suing in the Capacity of the Administrator of the Estate of Salim Nzangu Bakari in Succession Cause No 160 of 2018) v Kazungu & 2 others (Environment and Land Civil Miscellaneous Application E046 of 2024) [2025] KEELC 4532 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4532 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E046 OF 2024**

**EK MAKORI, J
JUNE 12, 2025**

BETWEEN

**FATUMA ATHMAN KOMBO 1ST PLAINTIFF
MWINYI NZANGU 2ND PLAINTIFF
SUING IN THE CAPACITY OF THE ADMINISTRATOR OF THE ESTATE OF
SALIM NZANGU BAKARI IN SUCCESSION CAUSE NO 160 OF 2018**

AND

**MIKE KAINGU KAZUNGU 1ST DEFENDANT
RM TINDIKA T/A TINDIKA & COMPANY ADVOCATES 2ND DEFENDANT
FELIX AYUYA MIKIKIRA T/A MIDIKIRA & COMPANY
ADVOCATES 3RD DEFENDANT**

RULING

1. The applicant's Notice of Motion, dated April 23, 2025, is supported by Randolph M. Tindika's affidavit, sworn on the same day, along with its annexures, and seeks the following orders:
 - a. Expended
 - b. This court issues a judgment in favor of the applicant and against the respondent, awarding Kshs—1,182,481.60, which represents the taxed costs pertinent to this case. Consequently, an order should be issued to convert the certificate of costs that was issued in this matter on April 14, 2025, into a formal decree.
 - c. A garnishee order nisi be issued against the garnishees, Omar Abeid Kurby and Jamila Nyambura Issa, trading as Issa Mutungi & Company Advocates, to satisfy the decree herein



in the amount of Kshs 1,182,481.60 plus interest at court rates from the 14th of April, 2025, along with costs of the garnishee proceedings amounting to Kshs 35,278.40, resulting in a total amount of Kshs 1,217,760.00. This order means that all funds held by the garnishees as proceeds from the sale of a portion of plot number 404, Section III, Mainland North, and payable to the respondent/judgment debtor shall be attached and shall not be released or transferred to any individual pending the hearing and determination of this application.

- d. The garnishees appear in court to contest whether they hold the stated amount or any portion thereof on behalf of the respondent/judgment debtor. In the event of default, this court shall issue a garnishee order absolute and order execution against the garnishees for the stated amount or such part thereof as is sufficient to satisfy the certificate of costs and decree herein, including interest at court rates from April 14, 2025, plus the costs of the garnishee proceedings. Furthermore, there shall be a directive that the aforementioned amount be disbursed to the applicant, plaintiffs/claimants/decree holders through their lawyers of record via Real Time Gross Settlement (RTGS) to wit, Tindika & Company Advocates, Standard Chartered Bank of Kenya Limited, Treasury Square Branch, Account Number 0102049117200, Bank Code 02, Branch 004, Swift Code SCBLKENX.
 - e. The garnishees bear the costs of this application along with the costs of the garnishee proceedings from the amount held in favor of the respondent/judgment debtor.
2. The respondent, upon receiving service of the application dated 23rd April 2025, submitted a replying affidavit sworn by Mike Kaingu Kazungu in opposition to the application at hand.
 3. The court, in accordance with the directives issued on May 5, 2025, instructed that the application be canvassed through written submissions. Mr. Tindika, representing his law firm as the applicant, and Ms. Jamilla, representing the respondents, diligently complied with the court's directions.
 4. From the materials and submissions presented to the court, the issues requiring the court's determination can be framed as follows: whether the respondent has filed a proper notice of objection before the taxing master; whether the applicant is warranted and/or deserving of orders sought in the application dated April 23, 2025; and who should bear the costs?
 5. According to the applicant, the crux of the application is that the Advocate/Client Bill of Costs herein was taxed on April 8, 2025, at Kshs—1,182,481.60, with a Certificate of Costs duly issued on April 14, 2025. The Garnishees hold funds related to the balance of the purchase price for a portion of Plot Number 404/III/Mainland North, Kikambala (which has already been subdivided into Plot Number: Mtwapa/Kanamai/Block 1/26), which the 1st Garnishee acquired for Kshs. 60,000,000.00. This amount is payable to the respondent/judgment debtor and has been paid to the respondent, except for Kshs—10,000,000.00, which is currently held by the Garnishees herein. The applicant previously filed another Advocate/Client Bill of Costs in ELCLC Miscellaneous Application Number E047 of 2024, which was taxed on February 13, 2025, at Kshs. 4,830,533.60; however, the respondent failed, neglected, and/or refused to pay the said taxed costs, prompting the filing of Garnishee Proceedings against the Garnishees through the Garnishee Application dated February 21, 2025, and amended on March 12, 2025, following the revelation that the amount of Kshs. 10,000,000.00 was being released to the respondent's Advocates—the said balance of Kshs. 10,000,000.00 has been paid to the 2nd Garnishee by the 1st Garnishee through two methods: Real-Time Gross Settlement (RTGS) of Kshs. 4,000,000.00 and the remaining Kshs. 6,000,000.00 through post-dated cheques.
 6. Given that some of the post-dated cheques have yet to clear and are due for presentation in May and June 2025, it is evident that part of the Kshs: 10,000,000.00, specifically Kshs. 3,999,600.00, representing the post-dated cheques, is still retained by the 1st Garnishee.



7. The applicant thus submits that a strong basis has been established to persuade this Court to grant judgment in his favor against the respondent in the sum of Kshs. 1,182,481.60, representing the taxed costs herein, and to issue an Order converting the Certificate of Costs issued in this matter on April 14, 2025, into a Decree.
8. Furthermore, this Court should ascertain and determine that the sum of Kshs. 1,182,481.60, in addition to the costs associated with the Garnishee proceedings, amounting to Kshs. 35,278.40, totaling Kshs. 1,217,760.00, along with accrued interest at court rates from April 14, 2025, until full payment is rendered, constitutes an outstanding debt owed by the respondent to the applicant. Consequently, the Garnishees should be directed to remit these amounts through the requested Garnishee Orders.
9. The applicant contends that the respondent, represented by his advocates, has provided the applicant with a copy of a letter dated April 28, 2025, addressed to the taxing officer, which purports to serve as a Notice of Objection to the Taxation. The applicant asserts that there exists no valid objection to the Taxation in this matter; consequently, the Certificate of Taxation ought to be converted into a Decree, with execution directed in accordance with the requested Garnishee Orders for the following reasons: the procedural requirements under Rule 11 of the Advocates (Remuneration) Order stipulate that any party dissatisfied with the taxation must submit a Notice of Objection within 14 days, clearly specifying the items being objected to as well as the reasons for such objections. The failure to identify specific items constitutes a breach of the procedural requirements outlined in Rule 11.
10. The applicant further contends that, absent specific objections, the taxing officer is unable to provide justifications, thereby impeding the court's capacity to conduct a meaningful review of the taxation decision. Moreover, non-compliance with the mandatory stipulations of Rule 11(1) of the Advocates (Remuneration) Order renders the objection fundamentally flawed. In the absence of identifying specific items, the taxing officer is precluded from revisiting the taxation decision, resulting in the objection lacking a legal foundation. The court was directed to the decisions in the cases of *American Bank of Kenya Ltd v Shah & Others* [2002] 1 EA 64 and *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR, which elucidate the necessity for a party to specifically identify the items being objected to, along with the reasons for objection to a taxed bill, and affirm that this procedure is mandatory.
11. Conversely, the respondent herein contends that after the taxing master's ruling delivered on April 8, 2025, he submitted his written notice of objection, dated April 28, 2025, challenging the entirety of the taxation of the bill of costs dated November 11, 2024. This objection is predicated on the absence of an advocate-client relationship, in accordance with Rule 11 (1) of the Advocates Remuneration Order, which stipulates that should any party object to the decision of the taxing officer, they may, within fourteen days after the decision, provide written notice to the taxing officer regarding the items of taxation to which they object. The taxing officer is obligated to promptly record and communicate to the objector the rationale for their decision on those items. Furthermore, the objector may, within fourteen days from the receipt of the reasons, apply to the judge via chamber summons, which shall be served on all relevant parties, articulating the grounds of their objection.
12. The respondent states that the written notice of objection submitted by the respondent is dated April 28, 2025, and is designated as "MKK-1" in the replying affidavit sworn by the garnishee on April 29, 2025. This notice was served to the applicant on the same date. The aforementioned written notice explicitly articulates the respondent's objection to the entirety of the ruling issued by the taxing master on April 8, 2025. The grounds for this objection are that there exists no client-advocate relationship. Consequently, the notice adheres to Rule 11(1), which stipulates a timeframe of fourteen calendar



days, exclusive of public holidays (specifically Easter holidays) and weekends (Sundays). Thus, the notice was filed within the specified timeframe.

13. The respondent asserts that, in accordance with Rule 11(2), the taxing master has yet to provide her reasons and/or report regarding the taxation of the bill of costs dated November 11, 2024, as well as the subsequent issuance of the certificate of costs dated April 14, 2025. The reasons for the aforementioned matters have not been furnished to the respondent. As indicated by Rule 11(2), the taxing officer is required to submit her report and/or reasons within fourteen (14) days from the date the written notice of objection was lodged with the taxing officer. Therefore, as no report has been provided and the fourteen (14) days have not yet elapsed, the respondent contends that the objection is valid.
14. The respondent asserts that Order 50, Rules 2 and 3 of the Civil Procedure Rules, outline the regulations pertaining to the calculation of time and detail the conditions under which the time ceases to accrue. It is clear that, in accordance with Rule 11(1), the stipulated duration is fourteen (14) days, during which the written notice of objection was duly filed before the esteemed taxing master. It is imperative to emphasize that, pursuant to the aforementioned legal provisions, public holidays are excluded from this calculation, as are Sundays. Consequently, the month of April encompasses the Easter holidays on April 18, 2025 (Good Friday), April 20, 2025 (Sunday), and April 21, 2025 (Easter Monday).
15. The respondent submits that Rule 11(1) has been duly complied with and that the notice of objection dated 28th April 2025 is pending before the taxing officer, as no records or reasons for the taxing officer's decision regarding the objection to the entire taxation have been submitted to the objector. Therefore, the application dated 23rd April 2025 is deemed premature and ought to be dismissed by this Court.
16. I have conducted a comprehensive review and thorough consideration of the materials and submissions, as well as the judicial authorities cited by the parties presented to me regarding the Notice of Motion and the merits of granting the requested orders. The applicant, in his Notice of Motion (application) dated April 23, 2025, seeks the issuance of a garnishee order nisi against the garnishees Omar Abeid Kurby and Jamila Issa Mutungi, trading as Issa Mutungi & Company, Advocates.
17. The respondent has submitted a replying affidavit sworn by Mike Kaingu Kazungu, thereby objecting to the garnishee proceedings. In its objection, the judgment debtor asserted, with which I fully concur, that the process of garnishing the decree has been initiated prematurely, as it has yet to crystallize. Garnishee proceedings serve as mechanisms for executing decrees in instances where matters have been fully resolved. Order 23 of the Civil Procedure Rules regulates the conduct of garnishee proceedings, stipulating that such proceedings may only be instituted by a decree holder, either before or after the oral examination of the judgment debtor. This rule presupposes that the judgment debtor has the right to address the court concerning the correctness or propriety of the execution proceedings initiated against him or her, both before and following the entry of a decree nisi on the court record.
18. In this matter, the application for the conversion of the certificate of costs raises a significant issue regarding whether it has crystallized, particularly in light of the objection proceedings currently before the taxing officer. The issues presented here, specifically whether the objections were filed promptly and in compliance with Rule 11(1), should have been prioritized, heard, and resolved before contemplating the conversion of the certificate of costs into a decree of this court.
19. Furthermore, the certificate of costs ought to have been converted into a formal decree before the initiation of any subsequent execution proceedings, leaving aside the garnishment proceedings. For instance, the respondents pose a pertinent question regarding the amount to be garnished. The respondent contends that he is not indebted to the applicant, indicating that the costs sought,



amounting to Kshs 35,278.40, were not included in the taxing officer's certificate of costs issued on April 14, 2025. Consequently, these costs have not been accounted for, and the methodology employed by the applicant to calculate this amount remains unclear in the supporting affidavit, which seeks a total of Kshs 1,217,760, in contrast to Kshs 1,182,481.60 disclosed in the certificate of costs. This discrepancy renders the requested orders untenable.

20. This matter is convoluted by the applicant's multiple requests to enforce the bill of costs. The applicant initiated ELC No. 122 of 2024 with an application dated November 25, 2024, requesting orders for the 2nd garnishee to deposit Kshs 13,602,408 as the applicant's fees, stemming from an untaxed bill of costs dated November 11, 2024, from ELC MISC Nos. 46 and 47 of 2024. The application has become moot since the bill of costs has been taxed, prompting the applicant to file a new one for garnishee orders against the respondent. In the ruling in ELC MISC No. 47 of 2024, the respondent sought to annul the certificate of costs dated February 13, 2025. Njoroge J. provided directives for this application, which is scheduled for hearing on June 19, 2025. Additionally, the applicant submitted another application dated April 23, 2024, in ELC MISC No. 46 of 2024, pending before this court, seeking garnishee nisi orders against the respondent.
21. An order of garnishee nisi may only be issued contingent upon the applicant demonstrating that the respondent possesses an indebtedness toward them. As previously indicated, this has not yet materialized. Let the appropriate procedures be adhered to before this court issues any lawful orders. Consequently, let the issues raised herein be addressed before we advance to the execution stage.
22. Consequently, the application dated April 23, 2025, is premature; it is dismissed with costs.

DATED, SIGNED, AND DELIVERED ELECTRONICALLY IN MALINDI ON THIS 12TH DAY OF JUNE, 2025.

E. K. MAKORI
JUDGE.

In the Presence of:

Mr. Tindika for the Applicant

Ms. Memia for the Respondents

Happy: Court Assistant

