



Obondo Koko & Company Advocates v Chepngetich (Environment and Land Miscellaneous Application E007 of 2024) [2025] KEELC 5697 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5697 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E007 OF 2024
LA OMOLLO, J
JULY 31, 2025**

**BETWEEN
OBONDO KOKO & COMPANY ADVOCATES APPLICANT
AND
FLORENCE CHEPNGETICH RESPONDENT**

RULING

Introduction

1. This ruling is in respect of the Applicant’s Chamber Summons application dated 25th November, 2024. The application is expressed to be brought under Rule 11(3) & (4) of the Advocates Remuneration Order and Article 159 of the Constitution of Kenya 2010.
2. The application seeks the following orders;
 - a. Spent.
 - b. Spent
 - c. That this Honourable Court be pleased to grant leave to the Applicant to file an appeal and or (sic) reference to the decisions (sic) of Justice L. Omollo dated 17th October, 2024.
 - d. That costs be in the cause.
3. The application is based on the grounds on its face and the supporting affidavit of Franklin Obondo Koko sworn on 25th November, 2024.

Factual Background.

4. The Applicant commenced the present proceedings vide the Chamber Summons application dated 15th March, 2024 wherein he sought the following orders:



- a. That the entire decision of the Learned Deputy Registrar dated 12th March, 2024 in the Kericho Environment and Land Court Miscellaneous Application No. 1 of 2024 with respect to the Applicant's Advocate-Client bill of costs dated 24th January, 2024 with regard to legal services rendered in the Kericho Environment and Land Court Case No. 19 of 2018 be set aside and taxed afresh by this Honourable Court or in the alternative be remitted for re-taxation by a different taxing officer.
 - b. That the costs of this application be provided.
5. On 17th October, 2024, the Court delivered a ruling on the said application and issued the following orders;
- “The upshot of the foregoing is that the reference herein succeeds and the Taxing Officer's decision on item No's 1, 1A, 12, 13, 14, 23, 24, 25, 29, 35, 37, 56, 59, 60, 61, 98 and 112 are hereby set aside.
- Item No. 1 is hereby taxed at Kshs. 900,000/= while item No. 1A is taxed at Kshs. 300,000/= . Item No's 12, 13, 14, 23, 24, 25, 29, 35, 37, 56, 59, 60, 61, 98 and 112 are taxed off.
- The Applicant is awarded VAT.
- Each party shall bear own costs of the reference...”
6. The application under consideration first came up for directions on 12th February, 2025. The Court directed that the application be canvassed by way of written submissions.
7. On 6th March, 2025, the application was mentioned for submissions and then reserved for ruling.

The Applicant's Contention.

8. The Supporting Affidavit is sworn by Franklin Obondo Koko counsel practicing in the name and style of M/s Obondo Koko & Co. Advocates.
9. He contends that on 17th October, 2024 this Court delivered a ruling on a reference which he filed through the firm of M/S Ken Ochieng & Co. Advocates.
10. He also contends that the said ruling drastically reduced the amount of money that the firm of M/S Obondo Koko & Company Advocates anticipated.
11. He further contends that upon receipt of the ruling, he met with Counsel representing the Applicant one Mr. Ken Ochieng to discuss the way forward.
12. It is his contention that he was advised to negotiate with the Respondent in order to resolve the matter.
13. It is also his contention that when the matter was mentioned before Hon. F.N Nyakundi, he informed him that he was ready to have a sit down with the Respondent. He goes on to state that he later had difficulties engaging with the Respondent.
14. It is further his contention that when he failed to reach the Respondent, he wrote her an email requesting for a meeting in his chambers to resolve the matter.
15. He contends that the Respondent declined to meet with him citing security reasons.
16. He also contends that he then decided that it is only fair that the Court deliberates on this issue as he is dissatisfied with the decision of the High Court(sic).



17. He further contends that the present application was expeditiously filed upon collapse of the negotiations.
18. It is his contention that the law requires a party intending to appeal from a determination of a reference of the High Court to seek for leave.
19. He ends his deposition by stating that the Court has wide powers and discretion to issue the orders sought. He goes on to state that it is in the interest of justice that the Applicant be granted leave to exhaust all the avenues available in the justice system so as to bring the matter to rest.

The Respondent's Response.

20. The Respondent, who was self-representing, filed a Replying Affidavit sworn by herself on 6th February, 2025.
21. She deposes that she is a widow who engages in farming activities to fend for her family.
22. She also deposes that the application under consideration has been brought in bad faith as the Applicant has spent the decretal sum for his personal use.
23. She further deposes that the Applicant filed the application under consideration and the reference for the sole reason of postponing and/or frustrating his obligation of paying the decretal sum.
24. It is her deposition that there were no discussions with the Applicant about any calculations beyond the present process. This is in response to the assertions in paragraphs 6, 7, 8, 9, 10, 11 and 12 of the Applicant's Affidavit in support of the application.
25. It is also her deposition that she made an application before the Deputy Registrar of the Environment and Land Court, Kericho requesting for the extraction of a bill of costs (sic) based on the ruling of this Court delivered on 17th October, 2024.
26. It is further her deposition that the Applicant was served with the said application and he attended Court. The Deputy Registrar did the calculations and served them with copies of the Certificate of Costs and a ruling delivered on 24th January, 2025.
27. She deposes that the Applicant now intends to appeal against the ruling of this Court and goes on to state that she denies (sic) the validity of any alleged appeal and that the time period within which to file an appeal has lapsed.
28. She also deposes that the Applicant's claim that he intends to appeal is a deliberate attempt to mislead the Court and delay proceedings. She admits that she declined to meet with the Applicant due to security reasons and states that no stay orders were issued to stop payment.
29. She further deposes that she filed a complaint at the Advocates Complaints Commission which complaint was registered as case No. CC/PE/FEB/24/19 (8323).
30. It is her deposition that after she filed the said complaint, the Applicant informed the Advocates Complaints Commission that he had filed an appeal. When he was asked to provide the appeal case number, he opted to file the application under consideration.
31. It is also her deposition that the Advocates Complaints Commission directed the Applicant to take into consideration the ruling delivered on 17th October, 2024 and deposit the money owed to her.
32. It is further her deposition that the Applicant instead deposited



- Kshs. 3,000,000/= in addition to Kshs. 2,693,000/= that he had previously deposited in her account prior to the filing of the said bill of costs.
33. She deposes that the Advocates Complaints Commission asked the Applicant to deposit the rest of the money and instead of doing so, the Applicant took a date for hearing of the present application. She goes on to state that the date for hearing of the application was taken in order evade depositing the rest of the money.
 34. She reiterates that the time for filing an appeal has lapsed and that the Applicant should not be allowed to file any appeal out of time as he has not advanced any valid grounds. She adds that the Applicant's actions are a delaying tactic.
 35. It is also her deposition that she was informed that the Applicant used the funds to purchase a Prado for himself which action constitutes professional misconduct. She is therefore requesting the Court to compel the Applicant to deposit the full amount owed into her account.
 36. It is further her deposition that the Applicant has frustrated her efforts of obtaining justice.
 37. She deposes that the funds she is claiming were transferred directly from the account of the Plaintiff in the former suit to the Applicant's account on 21st November, 2023. She goes on to state that a period of almost two years has lapsed since the said money was deposited.
 38. She also deposes that she has a serious medical condition which the Applicant is aware of and she therefore implores the Court to ensure that justice is served.
 39. She further deposes that the Applicant's actions have wasted considerable time, energy and resources. She goes on to state that she has made significant effort to pursue this matter including filing a complaint with the Advocates Complaints Commission.
 40. She ends her deposition by asking the Court to acknowledge the Applicant's non-compliance with Court orders and dismiss his appeal (sic) as it is baseless and time barred. She goes on to state that the Court should address the advocates misconduct and take the appropriate action while taking into consideration the wasted time and resources.

Issues for Determination.

41. The Respondent filed her submissions on 4th March, 2025 while the Applicant did not file any submissions.
42. The Respondent submits that the Applicant represented her in a matter and received on her behalf and without her consent kshs. 12, 286,298/= on 21st November, 2023.
43. The Respondent also submits that she was awarded the said sum of money as damages and costs.
44. The Respondent further submits that despite various Court orders, the Applicant has refused to remit the said funds to her.
45. It is the Respondent's submissions that out of Kshs,12,286,298, the Applicant has only given her Kshs. 5,693,000/= and the Court should therefore compel him (Applicant) to deposit the remaining funds into her account in order to satisfy the debt.
46. It is also the Respondent's submissions that the Applicant has brought the application under consideration with the intention of obstructing the ongoing proceedings before the Advocates Complaints Commission.



47. The Respondent reiterates the averments in her Replying Affidavit and submits that the Applicant received the said sums of money without her consent. It is her submissions that the Applicant's subsequent actions are indicative of misappropriation of funds which actions warrant investigations.
48. The Respondent submits that the Applicant should account for the funds received and pay back the balance.
49. The Respondent also submits that given the period of time that has lapsed, the Applicant should be compelled to repay the original amount together with the accrued interest.
50. The Respondent further reiterates her averments in the replying affidavit and urges the Court to compel the Applicant to pay the remaining balance of kshs. 6,593,298/=.

Analysis and Determination.

51. I have considered the Applicant's application, the response thereto and the Respondent's submissions. In my view, the single issue that arises for determination is whether the Applicant should be granted leave to file an appeal against the decision of this court.
52. The Applicant contends that he filed a reference before this Court and the Court delivered its ruling on 17th October, 2024.
53. The Applicant also contends that he is dissatisfied with this Court's decision as it further reduced the costs he was entitled to.
54. The Applicant further contends that he tried to negotiate with the Respondent but she was unwilling to engage in the negotiations.
55. It is the Applicant's contention that he now seeks leave to file an appeal before the Court of Appeal.
56. In response, the Respondent submits that the Applicant who previously represented her received Kshs. 12,286,298/= on 21st November, 2023 her behalf and without her consent.
57. The Respondent also submits that to date the Applicant has only given her kshs. 5,693,000/= out of the Kshs. 12, 286,298/=.
58. The Respondent contends that she filed a complaint against the Applicant at the Advocates Complaints Commission and that after the Applicant was directed by the commission to pay the balance of the money owed, he responded by stating that he had already filed an appeal.
59. The Respondent also contends that it was after the Applicant was asked to disclose the case number of the appeal that he (Applicant) took a date for hearing of the application under consideration.
60. It is therefore the Respondent's contention that the application under consideration has been filed as a delaying tactic and she urges the Court to dismiss it.
61. Paragraph 11(3) of the Advocates Remuneration Order provides as follows;

“(3) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subsection (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.”



62. In the judicial decision of Wambugu Kariuki & Associates v Invesco Assurance Company Limited [2018] eKLR the Court held as follows;

“I have considered the application of Rule 11(3) of the Advocates (Remuneration) Orders requires a party to obtain leave from the Judge to appeal against the ruling on the taxation of the bill of costs. The Court is called upon to exercise discretion. The discretion of the Court must be exercised fairly and judiciously in the interest of justice. This is more so because a party is at the mercy of the Court as what he seeks from the Court is not available as of right. One of the considerations a Court has is whether the adverse party would be prejudiced (sic) and whether a just cause has been shown by the Applicant to deserve the exercise of the Court's discretion. In my opinion the other party would not be prejudiced by the exercise of the discretion to grant leave. Any prejudice would be compensated by an award of costs. Such should not bar the Court from exercising discretion considering that the party did not oppose the application...I find that since he can only take further steps with the leave of the Court, I find that I should grant him leave in the interest of justice.” (Emphasis mine)

63. In the above cited judicial decision, the Court held that Paragraph 11(3) of the Advocates Remuneration Order gives the Court the discretion in deciding whether or not to grant leave to appeal to the Court of Appeal and that that discretion should be exercised judiciously.

64. The Court of Appeal in JMM v GNJ (Civil Appeal (Application) E014 of 2022) [2023] KECA 99 (KLR) (3 February 2023) (Ruling) held as follows;

“10. In the simplest terms, judicial discretion is the exercise of judgment by a Judge or Court based on what is fair under the circumstance and guided by the rules and principles of law. The exercise of discretion may either be judicial or judicious. It is judicial, if it is exercised in accordance with the enabling statutes while it is judicious when it carries or conveys the intellectual wisdom or prudent intellectual capacity of the Judge. However, whichever of the two approaches, the exercise must be based on a sound and sensible judgment with a view to doing justice to the parties. (See Aduaka, Charles E, Judicial Discretion and its application under the Nigerian Legal System, International Journal of Innovative Legal & Political Studies 6(4):38-49, Oct-Dec, 2018).” (Emphasis mine)

65. Therefore, this Court has to first consider whether the Applicant has shown just cause to deserve the exercise of the Court's discretion and secondly, whether the Respondent will be prejudiced.

66. The Applicant contends that he is dissatisfied with this Court's decision as it reduced the money he is entitled to.

67. The Applicant also contends that he has been unable to agree with the Respondent and he is therefore seeking leave to file an appeal.

68. The Respondent contends that the Applicant has not advanced any good reason for seeking leave to appeal and that the Applicant is using the intended appeal as a delaying tactic.

69. The Respondent also contends that the time within which to file an appeal has lapsed and therefore, the Applicant should not be granted leave to file his intended appeal.



70. In the judicial decision of *Nasibwa Wakenya Moses v University of Nairobi & another* [2019] eKLR the Court held as follows;

“ 13. Paragraph 11(3) is the correct provision. It provides that “Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under subsection (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.” This provision does not prescribe a time limit for a party to appeal to the Court of Appeal.” [Emphasis Mine]

71. Considering that Paragraph 11(3) of the Advocates Remuneration Order does not prescribe a time limit to appeal to the Court of Appeal, the Respondent’s submissions that time within which to file an appeal has lapsed cannot hold.

Disposition.

72. The basis of the Respondent’s response in objection to grant of orders sought in the application is that she needs to be paid the balance of the money that was deposited in the Applicant’s account arising from their Advocate-client relationship.

73. I must mention that any dispute arising on account of the Advocate-client relationship that subsists or subsisted between the Applicant and the Respondent is not for resolution by this court.

74. Taking the foregoing into consideration, I find that the Applicant’s Chamber Summons application dated 25th November, 2024 has merit and it is allowed in the following terms:

- a. Leave is hereby granted to the Applicant to lodge an appeal to the Court of Appeal against the decision of this court upon objection on taxation referred to it and decided on 17th October, 2024.
- b. Costs of this application shall abide the outcome of the intended appeal.

75. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 31ST DAY OF JULY, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Applicant present in person.

Applicant present in person- Advocate is absent.

Mr. Makori. Court Assistant

