



REPUBLIC OF KENYA



**Mwananchi Credit Limited v Mwangi (Civil Appeal E064 of 2021)
[2025] KEHC 14924 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E064 OF 2021
RN NYAKUNDI, J
OCTOBER 23, 2025**

BETWEEN

MWANANCHI CREDIT LIMITED APPLICANT

AND

BONIFACE CHEGE MWANGI RESPONDENT

RULING

1. What is pending before this Honourable Court for determination is a Notice of Motion Application dated 4th September 2025 brought pursuant to section 1A, 3A & 63(e) of the *Civil Procedure Act*, Order 22 rule 22, Order 51 rule 1 of the Civil Procedure Rules in which the Appellant is seeking the following orders: -
 - a. Spent
 - b. That this Honourable Court be pleased to stay execution of the warrants of attachment of the Appellants movable property dated 2nd September 2025, pending the hearing and determination of this application inter-partes as the court shall direct.
 - c. That this Honourable Court be pleased to stay execution of the warrants of attachment of the Appellants movable property dated 2nd September 2025, pending the hearing and determination of the Appellants' Objection to the Assessed costs in respect to the bill of costs dated 17th August 2024.
 - d. That this Honourable Court be pleased to direct that the Appellant be furnished with reasons for the taxing officer's decision on the bill of costs dated 17th August 2024 rendered on the 31st July 2025 to enable filing of the reference objecting to the assessed costs herein.
 - e. That costs of this application be provided for.
2. The application is made on the following grounds;



- a. The Respondents' Bill of costs dated 17th August 2024 was on 31st July 2025 assessed and taxed at kshs. 178,200.00/=
 - b. That a notice to object the assessed bill of costs was dully filed on the 13th August 2025 within 14 days' legal window to file an objection to the taxed bill.
 - c. That ever since the objection was filed the taxing officer is yet to communicate his decision for taxing the bill as he did and even the appellants efforts to secure a certified typed copy of the ruling or decision has been futile.
 - d. That it is only as per law provided, when a taxing officer gives his reasons for his taxation that the Appellant can as per the law move to file his reference on the items objected to which are clear in the notice of objection filed herein.
 - e. That in fact looking at the typed ruling by the taxing officer it clear that he does not give any reason for the items as taxed and this the Appellant having raised fundamental issues at the written submission stage feels aggrieved by the decision by the taxing officer.
 - f. The Respondent has now taken out warrants of attachment of the Appellant's moveable property in execution of the assessed bill which the appellant has timely indicated its desire to challenge only for the taxing officer not to have given his reasoning for the decision to enable the filing of the reference.
 - g. That in the circumstances if a stay does not issue the objection and reference shall be rendered nugatory and an exercise in futility.
 - h. That the Appellant feels very aggrieved with the assessed costs and should ordinarily in the interests of fairness be accorded a chance to object the bill as per law provided and which the execution threatened by the Respondent is not curbed, will deny him his right to object.
 - i. The application is timely brought after the Appellant were only served with the warrants on the 4th September 2025 and given 7 days before execution and as such the court should consider issuing the orders sought to avert what would render objection proceedings superfluous.
 - j. The Appellant herein has in fact instructed a firm of auctioneers Messrs Seventy Seven Auctioneers to execute the warrants dated 2nd September 2025 giving the ultimatum of 7 days before they move to execute.
 - k. The Appellant is a reputable money lending institution whose operations would be inconvenienced if the orders sought do not issue.
 - l. No prejudice shall be occasioned to the appellant if this application is allowed.
3. Which application is supported by the affidavit of Albert Kuloba dated 4th September 2025 who avers as follows:
- a. That I am a male adult Advocate of the High Court of Kenya with instructions to act on behalf of the Appellant in this matter conversant with the facts herein therefore competent to swear this affidavit.
 - b. That on the 31st July 2025 the taxing Officer rendered a decision on the Respondent's bill of costs dated 17th August 2024 assessing and taxing it at Kshs 178,200/=.



- c. That following that the assessment of the bill, I have never received its typed copy and the only version of the decision I have managed to get is a handwritten copy from the court as per a copy which I hereto attach and mark as “ASK1”.
 - d. That upon my client’s instructions and having sight of the ruling by the taxing officer, I filled the notice of objection to the assessment of costs in respect to the bill and I did this on the 13th August 2025 which is within the 14 days ultimatum as per rule 11(1) of the Advocates (Remuneration) Order.
 - e. That ever since the objection I am yet to receive the taxing officers’ reason for the decision on the bill to enable me to file a substantive reference objecting to the taxation.
 - f. That in the intervening period Respondents have now taken out warrants of attachment and have instructed Messrs Seventy Seven Auctioneers to execute the warrants served upon my client on the 4th September 2025 giving them 7 days to pay the assessed costs and that of the auctioneers which assessed costs I have instructions to object to by way of reference.
 - g. That even by the handwritten ruling of the officer, no reasons for assessing the bill as he did is stated and as such for lack of the reason of arriving at the decision we feel the bill as taxed is not proper and my client wishes to challenge the same.
 - h. That we also believe the taxing officer never took into consideration our submissions in opposing the bill as drawn and the appellant feels strongly the decision is not fair or reasonable.
 - i. That our objection has clearly earmarked several items and if looked at in terms of the submissions filed opposing the bill before taxation, the bill should not have been assessed as it was.
4. The application was opposed by way of a notice of preliminary objection dated 19th September 2025 based on the following grounds:
- a. That the court is bereft of jurisdiction in this matter to entertain any motion for a stay of execution as the decision refusing the appeal with costs being awarded to all the respondent is a negative order.
 - b. That the Principal Order to the Advocates (Remuneration) Order 1962 is a complete Code which does not cloth the court with jurisdiction to grant orders of stay of execution pending a reference on the decision of the Taxing Officer.
 - c. That the application is a nullity having been supported by the application of the appellants advocate on contentious matters in breach of rule 8 of the Advocates (Practice) Rules 1967.
5. From the notice of preliminary objection, the Respondent prayed that the motion be struck out with costs.
6. The application was further opposed by the respondent vide a replying affidavit dated 18th September 2025 sworn by Boniface Chege Mwangi who deposed as follows:
- a. That I have read the application dated the 4th September 2025 and wish to respond.
 - b. That the application seeking a stay of execution is incompetent as the appellant’s authorized officer or director has sworn the affidavit in support.
 - c. That the appellants advocates has deposed to contentious matters which are not within his knowledge on the prayer for stay of execution.



- d. That the appellant has not proved the conditions for the grant of a stay of execution.
 - e. That a stay of execution is granted as at right but it is predicated on the satisfaction of a legal conditions stipulated in law.
 - f. That the court has no jurisdiction to grant a stay of execution pending the determination of the appellant's objection to the taxed party and party costs as it is not provided for in law.
 - g. That the court has no jurisdiction to compel the Taxing Officer to supply reasons to the appellant for the taxation.
 - h. That application seeks for relief not provided for under Order 11 of the Principal Order to the Advocates (Remuneration) Order 1962.
 - i. We pray that the application be dismissed with costs.
7. Further to that is a supplementary affidavit sworn by Albert S. Kuloba dated 14th October 2025 who avers as follows:
- a. That further to my affidavit in support of the application dated 4th September 2025 and having read the replying affidavit of the respondent I do swear this affidavit in reaction to issues raised in the replying I do swear this affidavit in reaction to issues raised in the replying affidavit.
 - b. That as an advocate having personal conduct and on record in this matter, I am well versed with the facts and proceedings thus I swore the supporting affidavit to the application from a point of knowledge.
 - c. That the contentious issues in the application resolve around taxation of a bill of costs dated 17th August 2024.
 - d. That the issues of a bill of costs are matters of law which I am as an advocate having conduct of this matter, in fact understand them more than the client I represent who is not a legal entity to properly articulate matters of assessment of costs by a taxing officer.
 - e. That from the aforesaid I therefore believe that contrary to the assertion by the Respondent that the application is incompetent before court for reason that the advocate has sworn the affidavit on contentious issues, the issue at hand is purely issues of law as to whether the assessment of the bill dated 4th September 2025 was proper or not and I having had conduct of the matter, I am competent to swear the said affidavit.
 - f. That in the application we have shown the imminent execution of the assessment costs pursuant to the ruling of the taxing officer, where the respondent has taken out a decree and proceeded to proclamation the applicants movables as shown in the annexures.
 - g. That we have exhibited the taxing officer's handwritten ruling as exhibit 'ASK1' which clearly show no reasons having been given by the taxing officer as to why she taxed the items as she did.
 - h. That efforts to secure the typed ruling in time proved futile and in the interest of time I opted to get the handwritten one and in any case, this can be seen on the lower court file that at the time the ruling was yet to be typed.
 - i. That this court has jurisdiction and a discretion in the interests of justice to grant a stay as sought and I believe in light of the fact that the taxing officers ruling that clearly does not give reasons for her decision as required by rule 11 of the Advocates (Remuneration) Order.



- j. That it is only after such reasons are given that the reference may be filed pursuant to rule 11 of the ARO but looking at the handwritten ruling of the honourable magistrate, no reasons are given as to why she assessed the bill the way she did, and this prompted the notice I filed for objection to her decision.
- k. That the notice signifies the intent to contest the assessment by way of reference and if the execution is not stayed pending the filing and determination of the reference then the reference will be rendered superfluous.
- l. That following the assessment of the bill I have never received its typed copy and the only version of the decision I have managed to get is a handwritten copy from the court.
- m. That contrary to the assertion that the application seeks orders not provided under rule 11 of the ARO, if you look at the fact of the application the legal provisions that have been invoked give this court the jurisdiction and discretion to issue the orders sought.

Applicant's written submissions

- 8. Learned Counsel Mr. Simiyu submitted that pursuant to Rule 11 of the Advocates (Remuneration) Order, a taxing officer is required to give reason as to why he/she arrived at a particular assessment of the costs contained he/she did but the reason why the applicant has filed an objection to the assessment of the costs contained in the ruling of 31st July 2025 is because handwritten Ruling since it was impossible to secure a typed one from the court in time to challenge the imminent execution of the warrants.
- 9. Counsel further submitted that they filed submissions challenging the Bill of Costs which were not considered. That the submissions highlighted items in the bill that should not in fact have been included such as attendances that did not take place at all on the named days but the taxing officer did not address this.
- 10. It was submitted for the applicant that under Rule 11(1) of the ARO it is evident that any part such as the appellant who objects to the decision of a taxing officer may within 14 days after the decision give notice in writing to the taxing officer of the items they object to following the decision and under rule 11(2) of the ARO the taxing officer obligated following the notice to record and forward to the objector the reasons for his decision on the objected items. Therefore, looking at the application, the notice of objection was timely filed and the applicant is yet to receive the taxing officer's reasons for his decision.
- 11. Mr. Simiyu submitted that the essence of this application before the court is to seek stay of execution and as Order 2, and 3 read, their essence is to preserve the state of affairs pending the furnishing of the reasons by the taxing officer of her decision to enable the filing of the reference challenging how she assessed the contested items in the notice and to avoid rendering the application nugatory of the execution was not stayed so as to engage court in an academic show.

Analysis and determination

- 12. I considered the application, the grounds upon which it is premised, the replying affidavit, the notice of preliminary objection, the supplementary affidavit and the submissions by learned counsel.
- 13. Let me start with the provisions of Section 51(2) of the *Advocates Act* which provides as follows: -

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and



the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

14. And in the case of *Lubulellah & Associates Advocates vs N. K. Brothers Limited* [2014] eKLR the court observed that;

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs.

15. A critical issue that therefore emerges from the above provisions and case law and from the facts of this case is whether the Respondent is entitled to execute the certificate of costs issued by the taxing officer in its current state.

16. Section 51(2) of the Act provides that the certificate of the taxing officer shall be final as to the amount of costs unless it is set aside or altered by the Court, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

17. The provision makes it clear that for a certificate of costs to be executable, the Court must make an order adopting it as a judgment. In *Lubulellah & Associates Advocates vs. N. K. Brothers Limited* [2014] eKLR, the Court observed that once costs have been taxed and a certificate issued, and where there is no reference against the ruling or where a reference has been determined and not set aside or altered, no other action would be required from the court save to enter judgment.

18. The result of it is that the certificate must first be presented to the court for adoption as a judgment before execution can proceed. There is no evidence on record that the certificate of costs dated 31st July 2025 has been adopted as a judgment of this Court or that a decree has been extracted to enable execution.

19. The issuance of warrants of attachment on 2nd September 2025, as deposed by the Applicant and not disputed by the Respondent, appears to have been premature in the absence of a decree. Execution can only proceed on a decree, and a certificate of costs, while final as to quantum unless set aside or altered, does not automatically constitute a decree for purposes of execution.

20. This Court therefore finds that in the absence of an order adopting the certificate of costs as a judgment and the extraction of a decree, the Respondent is not entitled to proceed with execution of the certificate. As a result, the following orders do abide:

- a. That in the interim, a stay of execution of the warrants of attachment dated 2nd September 2025 is hereby issued.
- b. The parties do appear before this Court for a status conference on 30th October, 2025 to take directions on the further conduct of this application and any related proceedings.

21. Orders accordingly.

DATED AND SIGNED AT ELDORET THIS 23RD DAY OF OCTOBER, 2025

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R. NYAKUNDI



JUDGE

