

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISCELLANEOUS CIVIL SUIT NO. E051 OF 2021

KARIBU & COMPANY ADVOCATES.....

APPLICANT

-VERSUS-

TURERE OLE TAYIANA.....RESPONDENT

RULING

(In respect of the Motion dated 11th June 2025 in execution of a decree in favour of an Advocate against his client)

Introduction

1. Before this Court for determination is a Notice of Motion application dated 11th June 2025, brought by the firm of Kabiru & Company Advocates (hereinafter “the Applicant”) against Turere Ole Tayiana (hereinafter “the Respondent” or “the Judgment-Debtor”). The applicant seeks the following orders:

a) **Spent**

b) **THAT**, pending and determination of this matter the honorable court be pleased to issue an order granting temporary injunction, restraining the Respondent/Judgment-Debtor (and any persons acting under him or claiming under the subdivided parcels) from further subdividing, transferring, charging, disposing of, or dealing in any manner with any of the new parcels derived from Title No. KAJIADO/LOODARIAK/645 or permitting further registrations affecting the same; except as may be ordered by this Court.

- c) **THAT** this Honorable Court be pleased to issue an order compelling the Respondent/Judgment-Debtor to personally attend Court and to produce the following in relation to Title No. KAJIADO/LOODARIAK/645, now closed on subdivision:
- a) A list of all new parcel numbers created from the subdivision of the original title;
 - i. The names and contact details of all persons to whom those parcels were transferred if any;
 - ii. Certified copies of all transfer instruments executed by or on behalf of the Respondent in respect of any subdivided parcels derived from Title No. KAJIADO/LOODARIAK/645;
 - iii. Any written acknowledgments, declarations of trust, or memoranda of sale relating to the disposition or occupation of any part of the land previously comprising Title No. KAJIADO/LOODARIAK/645.
 - d) **THAT** upon the disclosure of the names of any transferees, this Honorable Court do issue such further orders for the attendance and examination of such persons as it may deem necessary for the full enforcement of the decree issued herein and to facilitate the tracing of assets or proceeds thereof.
 - e) **THAT** the Respondent/Judgment-Debtor be ordered to render a full and complete account of all transactions, dealings, or proceeds whether actual or intended arising from or relating to the subdivision, transfer, sale, or other disposition of any part of the land formerly comprised in Title No. KAJIADO/LOODARIAK/645.
 - f) **THAT** this Honorable Court be pleased to issue a declaration that, notwithstanding the subdivision of Title No. KAJIADO/LOODARIAK/645, the Respondent/Judgment-Debtor retains a beneficial interest in the land now comprised in the newly created

parcels (i.e. all the land derived from Title KAJIADO/LOODARIAK/645) in view of the Respondent's/Judgment-Debtor's continued occupation and beneficial use of the said land and is deemed to hold such interest on constructive trust for satisfaction of the decree issued on 21st January 2025.

- g) **THAT** this Honorable Court be pleased to issue an order that the land comprised in the newly created parcels (i.e. all the land derived from Title KAJIADO/LOODARIAK/645) remain subject to attachment and sale in execution of the decree issued on 21st January 2025.
- h) **THAT**, upon identification and valuation of the subdivided parcels derived from Title No. KAJIADO/LOODARIAK/645, this Honorable Court be pleased to order that such one or more parcels, be attached and sold by public auction to recover the decretal sum of Kshs. 1,625,597.90/- together with accrued interest thereon.
- i) **THAT** the costs of this application be provided for and interest on the decretal amount at the prevailing court rate from the date of the judgment until payment in full.
- j) **THAT** the honorable Court may grant any further reliefs that it may deem just and necessary.

2. The application is premised on the grounds set out on its face and is supported by the **affidavit of HENRY KABIRU**, an advocate of the High Court of Kenya and the principal partner in the Applicant law firm, sworn on 11th June 2025. The Applicant avers that the Respondent, being a former client, is indebted to the Applicant in the sum of **Kenya Shillings One Million, Six Hundred Twenty-Five Thousand, Five Hundred Ninety-Seven and Ninety Cents (Kshs. 1,625,597.90)** being taxed costs in **ELC Miscellaneous Application No. E051 of 2021**, which sum remains unpaid despite demand and the issuance of a decree dated **21st January 2025**.

3. The Applicant further contends that the Respondent, with full knowledge of the said decree, has since caused the subdivision and transfer of his only known asset, **Title No. KAJIADO/LOODARIAK/645**, to third parties—allegedly his children—in a deliberate attempt to frustrate or defeat the execution of the decree. It is on that basis that the Applicant seeks the intervention of this Court through the instant application to preserve the substratum of the said property, compel disclosure of the resultant parcel numbers and transferees, and facilitate execution of the judgment sum.
4. There is no response to the application despite service of the same.

Directions

5. The court directed that the application be canvassed by way of written submissions; the submissions of which have been duly considered in the writing of this ruling.

Analysis and Determination

6. Having considered the Notice of Motion dated 11th June 2025, the supporting affidavit of Henry Kabiru, and the submissions filed herein, the sole issue that commends itself for determination is whether the application as presented is properly before this Court and whether the reliefs sought can issue in the circumstances.
7. This court is of the opinion that advocate–client proceedings are sui generis, governed by the Advocates Act (Cap 16, Laws of Kenya) and the Advocates (Remuneration) Order, including all procedures on taxation and execution. They are therefore distinct from ordinary civil execution proceedings governed by the provisions of the Civil Procedure Act and Rules.
8. Accordingly, since the Applicant herein seeks injunctive and preservation orders to facilitate recovery of its taxed costs, this Court must be guided by the procedure expressly provided for under the Advocates Act.

9. **Section 52 of the Advocates Act** provides that:

“52. Charging orders

Any court in which an advocate has been employed to prosecute or defend any suit or matter may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit or matter, and may make orders for the taxation of the costs and for raising money to pay or for paying the costs out of the property so charged as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate.

Provided that no order shall be made if the right to recover the costs is barred by limitation.”

10. This provision creates a special statutory mechanism whereby an advocate may secure payment of his or her taxed costs by obtaining a charging order against the property of his client recovered or preserved through the advocate’s own instrumentality. It follows therefore that the proper remedy for an advocate seeking to realize his taxed costs through attachment and sale of the property of a former client is by first invoking Section 52 of the advocates’ Act and not by way of a general application under the Civil Procedure Act/Rules for attachment, injunction, or preservation.

11. The court in *Nyandoro and Company Advocates v National Water Conservation and Pipeline Corporation [2022] KEHC 142 (KLR)*, affirmed that the procedure for enforcing an advocate’s right over a client’s property is through an application under **Section 52 of the Advocates Act**.

The Court rightly held that:

“It is not in dispute that the Applicant Advocates are entitled to their legal fees for services rendered under instructions from the Respondents. Section 52 of the Advocates Act is clear that the provision is applicable only after costs are taxed in respect to the matter at issue.”

12. The Applicant firm herein obtained a certificate of taxation dated 25th May 2023 for Kshs. 1,625,597.90, which was subsequently adopted as a judgment of the court on 21st January 2025. The Applicant now seeks a wide array of orders including interim injunctions, declarations of trust, production of documents, attachment, and sale of property.
13. While the Court notes that the Applicant has a valid decree for taxed costs, the procedure adopted is, with respect, misconceived. The present application has been brought by way of Notice of Motion, invoking general provisions of the ***Civil Procedure Act*** and ***Rules***, rather than the specialized procedure for charging orders contemplated under ***Section 52 of the Advocates Act*** and ***Order 52 of the Civil Procedure Rules***.
14. This Court finds that the present application is not properly before it. The execution of an Advocate’s taxed costs must proceed in accordance with the provisions of the ***Advocates Act*** and ***Advocates (Remuneration) Order***.
15. The Applicant’s recourse lies in moving the Court under ***Section 52 of the Advocates Act*** for a charging order over the property alleged to have been recovered or preserved through its instrumentality, and not through the general provisions of the Civil Procedure Act and Rules.
16. This court therefore finds and holds that the Notice of Motion dated 11th June 2025 is improper. It is hereby struck out for being procedurally improper and not properly before this Court. The

Applicant is, however, at liberty to move the Court appropriately by way of summons under **Section 52 of the Advocates Act**. There shall be no orders as to costs.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 6th Day of November 2025.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Ndung'u h/b for Mr. Kabiru for the Applicant

N/A by the Respondent

Court Assistant: Mpoye

M.D. MWANGI
JUDGE