



REPUBLIC OF KENYA



M. S. Shariff & Company Advocates v Gaceri (Miscellaneous Application E003 of 2023) [2025] KEHC 16510 (KLR) (14 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E003 OF 2023
AN ONGERI, J
NOVEMBER 14, 2025**

BETWEEN

M. S. SHARIFF & COMPANY ADVOCATES ADVOCATE

AND

TANNEN GACERI CLIENT

RULING

1. The application coming for consideration in this Ruling is the one dated 2nd May 2025 brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 51 of the Civil Procedure Rules and Rule 7 of the Advocates (Remuneration) Order seeking the following prayers:-
 - i. That this Honourable Court do certify this application as urgent and places the same to be heard on a priority basis and service of the same be dispensed with in the first instance.
 - ii. That this Honourable Court be pleased to order the release of the funds held in Access Bank Account No. 0020140000066 under the title M. S. Shariff & Co. E. Kinyanjui & Co. to the Client/Applicant herein, in accordance with the ruling of the court.
 - iii. That costs of this application be provided for.
 - iv. That the court be pleased to issue such further and other reliefs as it deems fit and expedient in the circumstances.
2. The Applicant is based on the following grounds:-
 - i. The Client/Applicant was previously represented by the Advocate/Respondent in various lower court matters whose decretal sums were deposited and divided into thirds.
 - ii. The court directed that one-third of the decretal sum be paid to the Advocate, one third to the Client and the remaining one third be held in the aforementioned account pending taxation.



- iii. Taxation was concluded and a subsequent reference by the Client was struck out.
 - iv. In the Ruling, the court directed that the one third balance be released to the Client less costs.
 - v. The funds remain unremitted to the Client and are being held in a non-interest earning account, incurring losses through bank charges.
 - vi. That the Respondent will not be prejudiced if the orders sought are granted.
 - vii. That the Applicant therefore pray that the Orders sought herein be allowed as prayed.
3. The application is supported by the affidavit of TANNEN GACERI in which it is deposed as follows:-
- i. That I am the Client/Applicant herein well versed with the facts of this matter, hence competent to swear this affidavit.
 - ii. That I engaged M. S. Shariff & Company Advocates for representation in several matters at the lower court.
 - iii. That upon conclusion of the matter, the decretal sum awarded was divided into thirds; one-third to the Advocate, one-third to myself and one-third held in Access Bank Account No. 0020140000066 under the title M. S. Shariff & Co. E. Kinyanjui & Co. pending taxation.
 - iv. That taxation was conducted and my subsequent reference was struck out by this Honourable Court.
 - v. That in its ruling, the Court ordered that the balance (one-third share) be released to me less taxed costs.
 - vi. That I am aware that this reference to taxed costs was untenable as the taxing master had deemed the one-third costs paid to the advocate as the sum total of fees and I am therefore entitled to all the money held in the account.
 - vii. That despite the said ruling, the funds have not been released to me to date.
 - viii. That the funds are held in a non-interest-earning account, notwithstanding the order of the Court that they be held on an interest earning basis, and have continued to be diminished due to current account bank charges.
 - ix. That I am aware that my advocates on record did draw a funds transfer form which they duly transmitted to the advocates for the law firm which has to date refused to execute it to have the money released to me.
 - x. That the actions of the law firm mean that I have been forced to come back before this court for consequential orders for the release of the balance of the decretal sum.
 - xi. That it is only fair, just and in the interest of justice that the said funds be released to me without further delay.
 - xii. That I have come to court without unreasonable delay.
 - xiii. That no prejudice will be occasioned upon the Respondent herein if the orders sought herein are granted as no execution or ancillary court process will occur.
4. The Advocate filed a Replying Affidavit opposing the application dated 2nd May 2025 as follows:-



- i. That I am an Advocate of the High Court of Kenya practicing as such in the name and style of Shariff Ramadhan & Company Advocates who have conduct of this matter and hence I am competent to swear this affidavit.
- ii. That I have read and understood the Notice of Motion dated 2nd May 2025 and the Affidavit sworn on the same date instant by TANNEN GACERI and I am able to respond as follows.
- iii. That the Applicant was represented by the firm of E. K. Kinyanjui & Company Advocates and thus the firm of K. Michuki Law Advocates lacks audience in these proceeding as they are in violation of Order 9 Rule 9 of the Civil Procedure Rules.
- iv. That the firm of K. Michuki Law Advocates has neither obtained consent from E. K. Kinyanjui & Company Advocates nor sought leave of this Honourable Court as espoused by Justice Odunga (as he then was) in the case of Lalji Bhimji Sanghani Builders & Contractors v City Council of Nairobi (2012) eKLR.
- v. That further to paragraph 4 above, there is no notice of change or notice of appointment filed and thus the Applicant is a stranger to these proceedings.
- vi. That the notice of motion being improper violates the rules of procedure and is void ab initio a nullity and ought to be struck out with costs.
- vii. That be that as it may, Access Bank Account No. 0020140000066 in the names of M. S. Shariff & Co. Advocates and E. K. Kinyanjui & Co. Advocates has long since been closed on the 4th October 2024 and funds transferred as per court order in Voi HCCA No. E005 of 2023.
- viii. That the funds were released to the Client/Applicant and to the Administrator of M. S. Shariff & Company Advocates that was wound up as ordered interalia:
 - i. The amounts determined by Onginjo J. as due to the advocate M. S. Shariff & Company Advocate as advocates fees will be released from funds held in Access Bank Account No. 0020140000066 Account Title M. S. Shariff & Company E. Kinyanjui & Company Advocates and Account Branch Mombasa to the administrator Julu Advocate if not yet paid within 20 days from today.
 - ii. The amount in the joint Access Bank Account in (i) above (except the advocates fees above) will be released to Counsel for the client Tannen Gaceri herein within 30 days from today.
 - iii. Parties will bear their respective costs of the two applications.
 - iv. These orders apply mutatis mutandis to the other related two files E003 of 2023 and E004 of 2023.
- ix. That in compliance with the court order a consent dated 11th July 2024 was duly filed and the disbursements undertaken as per the court order.
- x. That the Client signed a discharge voucher on the 30th September 2019 indicating that she received “full and final settlement of all claims to with SPMCC No. 26 of 2017 – Voi, Myself Vs Juliah Njeri Muguro & Equity Bank (k) Limited”.
- xi. That the orders sought by the notice of motion dated 2nd May 2025 have thus been spent and this file together with E003 of 2023 and E004 OF 2023 ought to be marked as closed.



5. The parties filed written submissions as follows:- The Applicant, Tannen Gaceri, submitted that she seeks the Court's intervention to secure the release of funds that were lawfully awarded to her but have since vanished from a joint advocates' account.
6. The background of the matter is that following a judicial ruling and a subsequent taxation process, the Applicant was entitled to a specific sum held in a joint account at Access Bank.
7. However, despite a bank statement confirming the funds' presence, the Respondent Advocate has since claimed the account was closed with a zero balance, alleging the money was already disbursed to the Applicant—a claim she vehemently denies.
8. The central issue in the Applicant's argument is that the Respondent has acted in blatant disobedience of court orders.
9. That the judicial determinations from both the Taxing Master and the High Court clearly entitled the Applicant to the funds, creating a continuing legal obligation for the Respondent to release them.
10. The Respondent's failure to do so, coupled with the clandestine closure of the account, constitutes a direct challenge to the court's authority and a breach of fiduciary duty as outlined in the *Advocates Act*.
11. Furthermore, the Applicant contends that the withdrawal and closure of the account were executed without proper authorization.
12. That the account required the signatures of three specific advocates, including Mr. Kevin Michuki, who was completely unaware of these transactions.
13. This lack of consensus among all mandatory signatories renders the Respondent's actions unlawful.
14. That the bank's role is also called into question for permitting these transactions without the required signatures and for failing to respond to inquiries, thereby breaching its own fiduciary duties.
15. The submissions also assert that the Respondent's actions violate the strict provisions of the Advocates (Accounts) Rules.
16. These rules permit withdrawals from a client account only under specific, authorized circumstances, none of which apply here.
17. The Respondent has not provided any evidence of court order, client authorization, or approval from the Law Society that would justify the emptying and closure of the account.
18. Finally, the Applicant denied the Respondent's claim that the funds were disbursed to her as entirely unsubstantiated.
19. That the absence of any bank receipts or transfer records to support this assertion, combined with the suspicious circumstances of the account's closure, leads to the inescapable conclusion that the funds were improperly taken.
20. The Applicant therefore prays for orders compelling a full disclosure of the account records and the release of the owed funds to her.
21. The Advocate/Respondent, M.S. Shariff & Company, submitted that the Client/Applicant's Notice of Motion should be dismissed for two primary reasons.
22. First, they contend that the application is fundamentally incompetent and a nullity because it was filed by a new advocate, K. Michuki Law Advocates, without complying with the mandatory procedural requirement of Order 9 Rule 9 of the Civil Procedure Rules.



23. This rule stipulates that a change of advocate after a judgment has been delivered requires formal notice and, crucially, the leave of the court.
24. The Respondent asserts that since no such leave was sought or granted, the new advocate is not properly on record and lacks the legal standing to act for the Client/Applicant in these post-judgment proceedings.
25. They argued that this is a fatal defect that cannot be cured by the court's constitutional mandate to administer justice without undue regard to technicalities.
26. Second, on the substantive issue, the Respondent argued that the application is without merit as the matter it seeks to address has already been conclusively determined.
27. They state that the specific joint bank account in question was closed long ago, and the funds were lawfully released to the Administrator of M.S. Shariff & Company Advocates pursuant to a clear court order issued on 5th July 2024.
28. That this order directed that the advocate's fees, as previously determined by the court through taxation, be paid from that account.
29. The Respondent submitted that the current application is a frivolous attempt to re-litigate an issue that has already been settled by the court.
30. Consequently, they urge the court to strike out the application with costs awarded in their favor.
31. The issues for determination in the Application dated 2nd May 2025 are as follows;
 - i. Whether the application is procedurally competent.
 - ii. Whether the request for the release of funds has been overtaken by events.
32. The court must first confront the Respondent's preliminary objection grounded on Order 9 Rule 9 of the Civil Procedure Rules.
33. This rule provides a critical procedural safeguard, stating that when there is a change of advocate after judgment has been passed, no new advocate can act unless he has filed a consent signed by the previous advocate or, in the absence of such consent, has obtained an order of the court upon an application of which the previous advocate has been given notice.
34. The rationale for this rule is to prevent advocates being changed after a matter has been concluded, potentially to the detriment of their right to costs, and to ensure the court is properly seized of the representatives of the parties.
35. The Respondent correctly points out that the firm of E. K. Kinyanjui & Company Advocates was previously on record and that the current advocates, K. Michuki Law Advocates, have not demonstrated compliance with this mandatory provision.
36. The authority of *Lalji Bhimji Sanghani Builders & Contractors v City Council of Nairobi* [2012] eKLR, which was cited by the Respondent, reinforces the position that failure to comply with Order 9 Rule 9 renders the subsequent proceedings a nullity.
37. While the court is always mindful of its duty under Articles 159(2)(d) of *the Constitution* and Sections 1A and 1B of the *Civil Procedure Act* to administer justice without undue regard to technicalities, procedural rules are not mere technicalities; they are the framework that ensures the orderly and fair administration of justice.



- 38. A failure to adhere to Order 9 Rule 9 is a substantive procedural flaw. However, in the interest of a complete adjudication and given the serious allegations surrounding the disposal of client funds, the court will proceed to consider the substantive merits of the application.
- 39. On the substance of the matter, the application is fatally compromised. The gravamen of the Applicant's case is that the court should order the release of funds from a specific joint account, Access Bank Account No. 0020140000066.
- 40. The Respondent has deposed through a Replying Affidavit, which remains uncontroverted by any contrary affidavit evidence, that this very account was closed on 4th October 2024.
- 41. Further, the Respondent has exhibited a court order from Voi HCCA No. E005 of 2023 dated 5th July 2024, which provided a clear and specific mechanism for the disbursement of the funds held in that account.
- 42. The order directed that the advocate's fees, as determined by the court, be released to the administrator of the Respondent's firm, and the balance be released to the Applicant's counsel.
- 43. An application seeking an order in the terms of prayer (ii) is therefore rendered nugatory and overtaken by events, as the subject matter of the order—the funds in that specific account—is no longer in existence in that repository.
- 44. The court cannot issue an order to release funds from an account that has been closed. Courts do not act in vain.
- 45. The Applicant's assertion that the funds were never received and her challenge to the legitimacy of the account's closure, while serious, are not properly ventilated in the present application, which is predicated on the continued existence of the account.
- 46. The current application, which is anchored on a factual premise that is no longer in existence, cannot stand.
- 47. Consequently, for the reasons stated, the Notice of Motion dated 2nd May 2025 is without merit and is hereby dismissed.
- 48. Each party shall bear its own costs of the application.

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF NOVEMBER 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI.

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

..... for the Applicant

..... for the Respondent

