



**Murgor & Murgor Advocates v Imperial Bank Ltd (In Receivership)
& another (Commercial Miscellaneous Application E004 of 2022)
[2025] KEHC 16218 (KLR) (Commercial and Tax) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E004 OF 2022
MN MWANGI, J
NOVEMBER 7, 2025
IN THE MATTER OF THE ADVOCATES ACT (CAP 16 LAWS OF KENYA)
-AND-
THE ADVOCATES (REMUNERATION) (AMENDMENT) ORDER, 2014
-AND-
IN THE MATTER OF TAXATION OF BILL OF COSTS BETWEEN
ADVOCATE AND CLIENT**

**BETWEEN
MURGOR & MURGOR ADVOCATES APPLICANT
AND
IMPERIAL BANK LTD (IN RECEIVERSHIP) 1ST RESPONDENT
KENYA DEPOSIT INSURANCE CORPORATION 2ND RESPONDENT**

RULING

1. The Advocate applicant filed an Advocate-Client bill of costs dated 6th January 2022 against the respondents. In opposition thereto, the respondents filed a Notice of Motion dated 4th March 2022 under Sections 1A & 3A and of the *akn ke act 1924 3 Civil Procedure Act*, Section 56(2) of the Kenya Deposit Insurance Corporation Act, Section 51(2) of the *akn ke act 1989 18 Advocates Act*, Order 13 of the Advocates (Remuneration) Order, Order 9 Rule 13(1) of the Civil Procedure (Amendment) Rules, 2020, and all other enabling provisions of law. The respondents pray for orders that the Advocate-Client bill of costs dated 6th January 2022 be struck out.



2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Andrew Rutto, the 1st respondent's Liquidation Agent. Mr. Rutto averred that the Central Bank of Kenya approved the liquidation of the 1st respondent and appointed the 2nd respondent as the Liquidator through Gazette Notices 13994 and 13395 both published on 8th December 2021. He contended that pursuant to the provisions of Section 56(2) of the Kenya Deposit Insurance Corporation (KDIC) Act, no legal proceedings may be instituted or continued against the 1st respondent without leave of the Court, but despite this, on 7th January 2022, the Advocate filed an Advocate-Client bill of costs dated 6th January 2022 for Kshs.1,856,266,485.00, without first seeking leave of the Court and filing an application to cease from acting in HCCOMM No. 392 of 2016, which was still pending and he was still on record for the 1st respondent.
3. In opposition to the said application, the Advocate filed several affidavits sworn on 27th April 2022, 10th August 2022 & 24th November 2022 by Mr. Philip Kipchirchir Murgor, an Advocate of the High Court of Kenya, a Senior Counsel and a partner in the applicant law firm. Mr. Murgor averred that the applicant law firm was duly instructed by the respondents to act for them in HCCOMM No. 392 of 2016 and it is competent to claim fees. He contended that at the time the subject bill of costs was filed which was on 7th January 2022, the 1st respondent was not in liquidation as the High Court in Mombasa HCCC No. 36 of 2016 had stayed the Central Bank of Kenya's (CBK's) decision of 8th December 2021, appointing the 2nd respondent as the Liquidator, therefore no leave was required prior to the filing of the subject bill of costs.
4. Mr. Murgor asserted that the affidavit in support of the instant application is defective as its deponent lacked authority and knowledge of the original instructions, which were issued by Messrs. Mohamud Ahmed and Andrew Wamicwe. He stated that despite numerous demands since 2017, the respondents through Messrs. Mohamud and Rutto persistently refused to settle outstanding legal fees, ignored correspondence, and even appointed new Counsel without clearing the dues. He averred that by filing the subject bill of costs, the applicant law firm ceased from acting for the respondents as it could not simultaneously sue them for fees and represent them in ongoing matters. He further averred that there is no bar preventing an Advocate from filing a bill of costs where the Advocate – Client relationship has broken down. He urged this Court to sustain the Advocate's bill of costs.
5. In a rejoinder, the respondents filed further affidavits sworn on 14th July 2022 & 10th March 2023 by Mr. Andrew Rutto, the 1st respondent's Liquidation Agent. Mr. Rutto contended that leave of the Court was a mandatory requirement prior to the filing of the subject bill of costs since the 1st respondent was already under liquidation vide Gazette Notice No. 13395 of 8th December 2021 and the stay order issued in HCCC No. 36 of 2016 did not revoke the 1st respondent's liquidation. He asserted that though there are serious disputes over the alleged retainer, the said issues can only be determined once leave of the Court has been properly sought.
6. The application was canvassed by way of written submissions. The respondents' submissions were filed on 15th July 2022 & 16th August 2022 by the law firm of Issa & Company Advocates, whereas the applicant's submissions were filed on 10th August 2022 by the law firm of Murgor & Murgor Advocates.
7. Mr. Issa, learned Counsel for the respondents submitted that the 1st respondent was placed under liquidation on 8th December 2021 vide Gazette Notice No. 13994. He asserted that pursuant to the provisions of Section 56(2) of the *Kenya Deposit Insurance Act, 2012*, the Advocate ought to have first sought leave of the Court before filing the subject Advocate-Client bill of costs, which he failed to do, making the subject bill of costs incompetent. To buttress these submissions, Counsel



- relied on the Court of Appeal cases of *Kirtesh Premchand Shah v Trust Bank Limited* [2007] KECA 60 (KLR) and *Kissi Petroleum Products Ltd v Kobil Petroleum Ltd & 2 others* [2006] KECA 291 (KLR).
8. He referred to the Court of Appeal case of *Kenya Deposit Insurance Corporation v Richardson & David Limited & another* [2015] KECA 4 (KLR), and argued that the requirement for seeking leave of the Court before filing of suits against companies in liquidation was meant to prevent preferential treatment of creditors and to ensure that the liquidation process is managed under Court supervision fairly for all creditors and contributories. Mr. Issa asserted that the Advocate's Advocate – Client bill of costs dated 6th January 2022 is incompetent for want of leave of the Court, and proceeding with taxation of the said bill of costs would improperly interfere with liquidation by favouring one creditor.
 9. Mr. Ouma, learned Counsel for the applicant submitted that leave of the Court was not required to file these taxation proceedings. He argued that the Central Bank of Kenya's decision to appoint the 2nd respondent as the Liquidator of the 1st respondent had been stayed by the High Court at Mombasa on 22nd December 2021.
 10. Further, Counsel stated that the 2nd respondent named in the bill of costs is neither in receivership nor liquidation. Counsel contended that while the respondents rely on Gazette Notice No. 13995 of 8th December 2021 to assert that the 1st respondent was placed under liquidation, the said Gazette Notice was effectively suspended by the stay orders issued in Mombasa HCCC No. 36 of 2016, which orders have neither been stayed, nor varied, or set aside. Counsel submitted that at the time the Advocate's bill of costs was filed, the 1st respondent was not under liquidation, and therefore the provisions of Section 56(2) of the KDIC Act did not apply.

Analysis And Determination.

11. The Deputy Registrar in a Ruling delivered on 26th May 2023 stayed the subject bill of costs and referred the issue of leave to file the said bill of costs to the High Court for determination. As such, the only issue that arises for determination before this Court is whether the applicant ought to have first sought leave of the Court before filing taxation proceedings, in the form of an Advocate-Client bill of costs.
12. The respondent's case is that the Central Bank of Kenya, through a Gazette Notice published on 8th December 2021, approved the liquidation of the 1st respondent and appointed the 2nd respondent as its Liquidator. Therefore, pursuant to the provisions of Section 56(2) of the Kenya Deposit Insurance Corporation Act, no legal proceedings could be commenced or continued against the 1st respondent without prior leave of the Court. The respondent stated that on 7th January 2022, the Advocate proceeded to file an Advocate-Client bill of costs dated 6th January 2022 in the sum of Kshs.1,856,266,485.00, without first obtaining the requisite leave.
13. The Advocate contended that it had been duly instructed by the respondents to act for it in HCCOMM No. 392 of 2016 and he is therefore entitled to claim his fees. He maintained that as at 7th January 2022 when the subject bill of costs was filed, the 1st respondent was not under liquidation since the High Court in Mombasa HCCC No. 36 of 2016 had stayed the Central Bank of Kenya's decision of 8th December 2021 appointing the 2nd respondent as the 1st respondent's Liquidator. He asserted that leave of Court was not required prior to filing the said bill of costs. The respondents however argued that the stay order issued in HCCC No. 36 of 2016 did not revoke the liquidation.
14. It is undisputed that through Gazette Notice No. 13394 dated 8th December 2021, the Central Bank of Kenya revoked the 1st respondent's license to operate, and subsequently, via Gazette Notice No. 13395 of the same date, appointed the 2nd respondent as the 1st respondent's Liquidator, thereby placing the



1st respondent under liquidation. It is further on record that on 22nd December 2021, the High Court sitting at Mombasa in HCCC No. 36 of 2016 issued stay orders in the following terms –

1. ...
2. That pending the hearing and determination of this application there be and is hereby issued an order staying the 1st Defendant's decision to appoint Kenya Deposit Insurance Corporation as Liquidator of Imperial Bank Limited (In Receivership) inter partes.
3. That pending hearing and determination of this application there be and is hereby issued an order to restrain the Defendants either through Kenya Deposit Insurance Corporation or through any of the Defendants' appointees, agents, employees, officers, or any person acting for Defendants from paying out deposits in execution of the 1st Defendant's decision to appoint Kenya Deposit Insurance Corporation as liquidator of Imperial Bank Limited (in Receivership) inter partes...
15. In order to determine whether or not the Advocate should have sought leave of the Court as provided for under Section 56(2) of the Kenya Deposit Insurance Corporation Act before filing its Advocate – Client bill of costs, this Court has to first consider the effect and import of the aforesaid stay orders.
16. The High Court's Order staying the Central Bank of Kenya's decision to appoint the Kenya Deposit Insurance Corporation as the Liquidator of Imperial Bank Limited (In Receivership) had the effect of suspending or freezing the operation of Gazette Notice No. 13395 dated 8th December 2021, which had placed the 1st respondent under liquidation. Therefore, in the absence of any other Gazette Notice or Court Order affecting liquidation, I am persuaded that the stay orders issued on 22nd December 2021 effectively halted the liquidation process of the 1st respondent.
17. The Court of Appeal in *Kissi Petroleum Products Ltd v Kobil Petroleum Ltd & 2 others* (supra) addressed the effect of staying a winding up order which is similar to a liquidation order as hereunder –

That interpretation is not of course binding on us but with respect, Njagi J has, in our view, correctly construed section 228 vis-à-vis the order of stay of the winding up order. The winding up order has already been made by the winding up Court. It is not however operational because this Court has stayed its rigours. Such an order of stay cannot, however, whittle down the provisions of the section 228. Until the winding up order is set aside, leave of the Court is still required for the continuation of the proceedings by the company. Leave to institute the appeal has not been obtained. The applicant is seeking a discretionary order. In dealing with the application, the Court cannot ignore the provisions of section 228 as any appeal without leave of the Court would be incompetent.
18. Bound by the abovementioned decision, this Court finds that the mere fact that the Central Bank of Kenya's decision to appoint the 2nd respondent as the Liquidator of the 1st respondent had been stayed at the time the subject bill of costs was filed, did not relieve the Advocate of the obligation to comply with Section 56(2) of the Kenya Deposit Insurance Corporation Act, which stipulates that –

No injunction may be brought or any other action or civil proceeding may be commenced or continued against the institution or in respect of its assets without the sanction of the Court.
19. This Court finds that prior to the filing of the subject bill of costs against the 1st respondent, the Advocate was required to first obtain leave of the Court. Therefore, failure to do so renders the Advocate's bill of costs fatally defective for want of leave.



20. On the Advocate's contention that the subject bill of costs is also directed against KDIC, which is neither in receivership nor under liquidation and is therefore sustainable, the said contention cannot hold in light of the provisions of Section 50(5) of the KDIC Act, which states that -

Where the Corporation, exercises one or more powers under this section, the Corporation shall not, by reason of the exercise of such powers, be held to have assumed or incurred any obligation or liability of the institution for its own account.

21. To this end, I am guided by the Court's holding in the case of Andrew Muma And Charles Kanjama Trading as Muma & Kanjama Advocate & others v Deloitte & Touche East Africa & 5 others [2020] KEHC 10059 (KLR), where it was held as follows-

It is clear that, the aforesaid provisions expressly prohibit institution of a suit against the Corporation, save for a person claiming that; they have sustained losses as a result of the action of the Corporation. However, the Corporation acts as an agent of the Chase Bank Limited in Receivership... Therefore, the Bank in Receivership and the Corporation cannot both be parties in the suit.

22. Further, in Atul R. Shah & another v Imperial Bank Limited & another [2021] KEHC 7923 (KLR), the Court in addressing the effect of Sections 45(5) & 50(5) of the KDIC Act made the following observation-

...The upshot of the foregoing is that, when the 2nd Defendant is appointed as receiver of any entity, it acts as an agent of such entity. It assumes no liability of such entity at all. Its liability is restricted to damages suffered by any party as a result of its own actions. See Andrew Muma and Charles Kanjama Trading as Muma & Kanjama Advocate & others v Deloitte & Touche East Africa & 5 others [2020] eKLR.

23. In the circumstances, I find that the subject bill of costs cannot be maintained against the 2nd respondent (KDIC), as it acts merely as an agent of the 1st respondent and does not assume liability for the actions of the 1st respondent. Moreover, the Advocate has neither pleaded nor demonstrated any loss occasioned by the conduct of the 2nd respondent.

24. In the end, this Court finds that the Advocate's Advocate - Client bill of costs dated 6th January 2022 is fatally defective for want of compliance with the provisions of Section 56(2) of the KDIC Act. The said bill of costs is hereby struck out. Costs of the application dated 4th March 2022 are hereby awarded to the respondents.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 7TH DAY OF NOVEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of;-

Mr. Ouma for the Advocate

Mbatai h b for Mr. Issa for the respondents

Ms B. Wokabi – Court Assistant.

