



REPUBLIC OF KENYA



**JW Frank Advocates LLP v Nganga (Commercial Miscellaneous Application E522 of 2025)
[2025] KEHC 17183 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX**

COMMERCIAL MISCELLANEOUS APPLICATION E522 OF 2025

PM MULWA, J

NOVEMBER 20, 2025

BETWEEN

JW FRANK ADVOCATES LLP APPLICANT

AND

LEWIS NGUYAI NGANGA RESPONDENT

RULING

1. This ruling is in respect of the Notice of Preliminary Objection dated 30th June 2025, filed by the Respondent seeking to strike out the Applicant's application dated 15th May 2025. The Respondent raises four grounds in support of the objection:
 - i. That the application is fatally defective and bad in law for want of jurisdiction, as it seeks substantive final orders through a miscellaneous application.
 - ii. That the application seeks judgment in the absence of a certificate of taxation contrary to section 51(2) of the *Advocates Act*, Cap 16, Laws of Kenya.
 - iii. That the jurisdiction of the Court has not been properly invoked, as the application is a miscellaneous application which cannot be used to institute original proceedings for contested civil claims for monetary judgment.
 - iv. That the procedure adopted by the Applicant constitutes an abuse of the Court process, calculated to bypass due process, and ought to be struck out under the inherent powers of the Court.
2. The Applicant's motion seeks judgment for the sum of Kshs. 801,340/= being the balance of legal fees pursuant to the remuneration agreement dated 15th November 2023.



3. Ms. Wanjiru, representing the Applicant, argued that the Preliminary Objection raises issues that are not purely legal, and therefore the objection ought to be dismissed. She contended that the remuneration agreement is undisputed and the amount claimed is clear. She further submitted that the enforcement of contractual rights under a remuneration agreement can validly be brought via a miscellaneous application.
4. Ms. Kimani, representing the Respondent, submitted that the objection is clear and grounded in law. She contended that the application is fatally defective and that the reliefs sought are substantive and cannot be granted through a miscellaneous application. She further argued that the amount claimed under the remuneration agreement is disputed and that the proper procedure is to institute a formal suit.
5. It is well established that a preliminary objection must raise a pure question of law. Where the objection involves disputed facts, it cannot succeed as a preliminary objection. In *Nitin Properties Ltd v Singh Kalsi & Another* [1995] eKLR which elaborated the legal principle when it stated as follows:

“...A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”
6. The leading authority on the approach to preliminary objections is *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, where the Court of Appeal held that an objection can only succeed at the threshold if it raises a pure question of law. If the objection requires the determination of disputed facts, it should be decided in the main proceedings.
7. It is clear from the above excerpts that a preliminary objection may only be raised on a ‘pure question of law’. In order to discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. In the present case, the Respondent contends that the amount claimed is disputed. The Respondent also submits that substantive relief cannot be granted through a miscellaneous application.
8. On the other hand, the Applicant’s claim is founded on a written remuneration agreement that is not challenged. The amount is specific, and there is no suggestion that the agreement itself is void. The Court may therefore exercise its discretion to entertain the application to enforce an undisputed contractual right.
9. Section 51(2) provides that a party may not obtain judgment for legal fees unless the fees have been taxed by the court, or unless the fees are agreed upon in writing. In the instant case, the Applicant claims a liquidated sum under an undisputed remuneration agreement. Where the amount is readily ascertainable and the underlying contract is not in dispute, the requirement of taxation may not strictly apply (*See Kariuki & Co. Advocates v Njenga* [2012] eKLR).
10. The alleged abuse of the court process is closely linked to the improper procedure. Abuse of process occurs where the court’s process is used to circumvent legal requirements or delay justice. The court notes, however, that the Applicant’s application is premised on enforcement of an undisputed contractual obligation, and there is no evidence of vexatious intent.
11. Miscellaneous applications are ordinarily used for interlocutory relief or enforcement where there is no substantive dispute on the facts or quantum.



12. Having considered the submissions, the relevant provisions of the *Advocates Act*, and authorities cited, I find that the preliminary objection raises both questions of law and matters of fact, particularly regarding the disputed amount. On this basis alone, it cannot succeed as a pure preliminary objection.
13. In the circumstances, the Preliminary Objection is hereby dismissed. No orders as to costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF NOVEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Ms. Wanjiru Njubi for Advocate

Ms. Kimani for Respondent/Client

Court Assistant: Carlos

