

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
MISC APPLICATION NO. E133 OF 2024

KIAMA WANGAI & CO. ADVOCATES.....
RESPONDENT/ADVOCATE

VERSUS

DR. MARTIN AJUJO.....CLIENT/APPLICANT

RULING

Applicants' Case;

- 1. This court has been invited to determine the Application dated 9th May 2025 wherein the Applicant is seeking the following orders:**
 - 1) The Honorable Court be pleased to vacate and set aside in its entirety the Ruling and reasoning of the learned Taxing Master Hon. E. C. Chelule, Deputy Registrar delivered on 3rd April 2025.**
 - 2) The Honourable Court be pleased to strike out in its entirety the Advocate/Applicant's Bill of Costs dated 14th November 2024.**
 - 3) The Honorable Court be pleased to order that the Advocate-Client relationship existed between the Advocate/Respondent and the other ex-parte Applicants being Prof. Stanley Khainga and Surgeoderm Healthcare in HCCJR MISC. 43 of 2019 and not just the Client/Applicant herein.**

4) In the alternative to prayer (1) & (2) above, the Honorable Court be pleased to remit the Bill of Costs dated 14th November 2024 for re-assessment as to the scope of Instructions between the other ex-parte Applicants being Prof. Stanley Ominde Khainga and Surgeoderm Healthcare in HCCJR MISC. 43 of 2019 and not just the Client/Applicant herein.

5) The costs of this Application be provided for.

2. The Applicant's case is that the Taxing Master fundamentally misapprehended the law regarding the existence of an advocate–client relationship.
3. He argues that the Advocate/Respondent was instructed by Surgeoderm Healthcare Ltd, on whose behalf the impugned legal services were rendered.
4. The Applicant's case is also predicated on the argument that the Advocate/Respondent received payments from Surgeoderm Healthcare Ltd in relation to the matter.
5. He reiterates that the true instructing party in HCJR Application No. 43 of 2019 that informs the issues before this court was Surgeoderm Healthcare Ltd, as evidenced by the company's CR-12 and that he never issued personal instructions to the Advocate/Respondent.
6. He further relies on a letter dated 2nd March 2023 from Da Vinci Medical Group written on behalf of Surgeoderm Healthcare Ltd,

accounting for fees payable to the Advocate/Respondent in all matters, including HCJR Application No. 43 of 2019.

7. With this background, the Applicant believes that the Taxing Master improperly imposed personal liability upon him.
8. The Applicant urges the Court to exercise its supervisory jurisdiction under Sections 1A, 1B and 3A of the Civil Procedure Act and Rule 11(2) of the Advocates (Remuneration) Order to correct the manifest error, uphold fairness, and preserve the integrity of the taxation process.
9. Reliance is placed in the case of **Elizabeth Muthoni Muriithi v Joseph Muchina Muriuki & another [2018] KEELRC 1887 (KLR)**, where the Court confirmed that actions against a company must be directed at the company itself, not its directors or shareholders, reiterating that a corporate entity is “a distinct legal persona.”
10. The Applicant argues that the Respondent has not demonstrated any legal basis upon which the corporate veil may be pierced to hold him personally liable.
11. He relies on **Kenya Hotels and Allied Workers Union v Praying Mantis Limited (Octopus Club) [2024] KEELRC 2786 (KLR)**, where the Court held that piercing the corporate veil is permissible only where it is shown that a director intends to use the company to evade existing legal obligations.
12. The Applicant submits that no such circumstances exist in this case.

13. The Applicant places reliance in the case of **Paa Brothers Company Limited v Cheruiyot & another; Muthangari Suites Management Co Ltd (Affected Party) [2023] KEHC 25441 (KLR)**, where the court cautioned against actions brought to settle personal vendettas and emphasized that the Court must look at the whole picture to ensure that legal proceedings are not driven by hostility.

The Respondents' Case;

14. The Respondent relies heavily on the reasoning of the Taxing Master in the ruling delivered on 3rd April 2025. The Respondent further contends that the Applicant has, by his own pleadings, admitted the existence of an advocate-client relationship.
15. It is his case that the Applicant has not challenged the quantum awarded by the Taxing Master namely, Kshs. 223,781.40 for the Advocate-Client Bill of Costs dated 14th November 2024 and therefore the only issue is whether an advocate–client relationship existed between the parties.
16. He underscores that the Taxing Master reviewed the record in Nairobi Judicial Review Application No. 43 of 2019, **Republic v Preliminary Inquiry Committee & Anor ex parte Prof. Stanley Ominde Khainga, Dr. Martin Ajujo and Surgeoderm Healthcare**, and found that the Applicant herein was not only a director of Surgeoderm Healthcare Ltd but was himself a named ex parte Applicant in the proceedings.

- 17.** He argues that The Taxing Master further observed that the Applicant filed the suit on behalf of all the ex parte Applicants and remained on record until its determination.
- 18.** In the Respondent's view, it would be untenable and inequitable to deny the existence of an advocate-client relationship on the basis of the absence of a formal letter of instructions, given the nature and extent of representation evidenced on the court record.
- 19.** He points to Prayer 3 of the Application, in which the Applicant explicitly seeks an order declaring that the Advocate-Client relationship existed between the Advocate/Respondent and the other ex parte Applicants, and not just the Client/Applicant herein.
- 20.** The Respondent submits that this admission is fatal to the Applicant's challenge and confirms that instructions were in fact issued by the Applicant.
- 21.** He argues that the Applicant's submissions appear to be designed in a way that he wants the court to compel him to prepare additional Bills of Costs against other parties, which is not the subject of the present Application.
- 22.** It is the Respondent's position that parties are bound by their pleadings and that having admitted the issuance of instructions, the Applicant cannot now be heard to deny liability for the resultant fees.
- 23.** He therefore characterizes the Application as frivolous, vexatious, unmerited, and an abuse of the court process.

Analysis and Determination;

The issue for determination is whether or not the Application has merit.

- 24.** In the case of **Vipul Premchand Haria vs Kilonzo & Co Advocates/2020 eKLR**, this Court outlined the nature of the taxing officer's discretion thus;

“Once the client was dissatisfied with the bill, it fell upon the Taxing Master to tax it. Such taxation, much as it lies in the taxing Officer's discretion, is governed by clear principles. In other words, the discretion is a judicial one to be judicially and judiciously exercised. It is not to be exercised whimsically or capriciously in accordance with personal inclination. And the matters the taxing officer takes into consideration should be apparent from the reasons that she gives for her decision. It is those reasons that give an indication whether or not the discretion reposed in the taxing officer was properly exercised.”

- 25.** Where legal services benefit a company, the liability to settle professional fees must rest with the company itself and not with its directors.

- 26.** In the well-established principle of corporate personality as pronounced in Salomon versus Salomon case, it was held that the company has a distinct legal status and Mr. Aaron Salomon could not be personally liable for the company's debts.

- 27.** This principle was restated in the case of **Elizabeth Muthoni Muriithi v Joseph Muchina Muriuki & another [2018]**

KEELRC 1887 (KLR), where the Court confirmed that actions against a company must be directed at the company itself, not its directors or shareholders, reiterating that a corporate entity is “a distinct legal persona.”

- 28.** The law is trite that a director of a company is a distinction and separate legal entity from a company.
- 29.** In the instant suit there is no dispute that Respondent received part payments from Surgeoderm Healthcare Ltd in relation to HCJR Application No. 43 of 2019 where Surgeoderm Healthcare Ltd was a party. The company’s CR-12 of the company confirms that there other parties were directors.
- 30.** The letter dated 2nd March 2023 from Da Vinci Medical Group written on behalf of Surgeoderm Healthcare Ltd, confirms the fees payable to the Respondent in all matters, including HCJR Application No. 43 of 2019.
- 31.** The fact that the Applicant was a party in the primary suit does not in itself discharge the company from its liability. Neither does it amount to a subrogation of the rights and the duties of the company to the Applicant before this court.
- 32.** As such a discretion that leads to a judgment that offends this long settled company law principle cannot be said to be a discretion that was exercised judiciously. The Taxing Master misguided herself fundamentally while exercising discretion leading to an illegality which cannot stand no generator rights duties or obligations on parties.

Determination;

33. The Taxing Master acted illegally in making a finding against the Applicant in his personal capacity as a director of the Surgeoderm Healthcare Ltd to shoulder the costs.

Order;

- 1) The Ruling of the learned Taxing Master Hon. E. C. Chelule, Deputy Registrar delivered on 3rd April 2025 is hereby set aside.
- 2) The prayer that Honourable Court strike out in its entirety the Advocate/Applicant's Bill of Costs dated 14th November 2024 is declined.
- 3) The prayer that this court orders that the Advocate-Client relationship existed between the Advocate/Respondent and the other ex-parte Applicants being Prof. Stanley Khainga and Surgeoderm Healthcare in HCCJR MISC. 43 of 2019 and not just the Client/Applicant herein is declined.
- 4) The Bill of Costs dated 14th November 2024 is remitted for re-assessment.
- 5) Costs to the Applicant.

Dated, Signed and Delivered at Nairobi this 24th Day of November 2025.

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J. CHIGITI (SC)

JUDGE