



**Muriithi Kireria and Associates Advocates v Crescent Construction
Company Ltd (Judicial Review Miscellaneous Application 12 of 2015)
[2025] KEHC 17396 (KLR) (Judicial Review) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 12 OF 2015
JM CHIGITI, J
NOVEMBER 26, 2025**

BETWEEN

MURIIITHI KIRERIA AND ASSOCIATES ADVOCATES APPLICANT

AND

CRESCENT CONSTRUCTION COMPANY LTD RESPONDENT

RULING

1. The Application that is before this court for ruling either one dated 15th October 2025 were the Applicant seeks the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to issue an Interim Orders of Stay of execution of the ruling and/ or the resultant Decree dated 8th April, 2019, orders of this Court dated the 14th August 2025 directing sale by Public Auction of the Applicant's property known as L.R. No. 209/8869, registered in the name of Crescent Construction Company Limited, Lunga Road, Industrial Area, Nairobi County, pending the hearing and determination of this Application.
 3. That this Honourable Court be pleased to issue an Interim Orders of Stay of execution of the ruling and/or the resultant Decree dated 8th April, 2019, orders of this Court dated the 14th August 2025 directing sale by Public Auction of the Applicant's property known as L.R. No. 209/8869, registered in the name of Crescent Construction Company Limited, Lunga Lunga Road, Industrial Area, Nairobi County, pending the hearing and determination of this Application inter-partes.



4. That the Certificate of Costs dated 2nd November, 2018 with the resultant Decree herein dated 8th April, 2019 be set aside, and / or reviewed / vacated.
5. That the Applicant Company be allowed to render security or conditions to set aside both the Certificate of costs together with the Decree herein by way of deposit of principal sum Kshs. 15,506,385/= into an Escrow interest earning account in the joint names of the parties advocates pending hearing and determination of this Application and a substantive reference against the taxation/ certificate of costs herein dated 2nd November, 2018.
6. That the Applicant be granted leave or enlarge time to file a Reference against the taxation Advocates bill of Costs dated 27th September, 2018/Certificate of Costs herein dated 2nd November, 2018, out of time.
7. Costs of this Application be provided for.

The Applicant Case;

2. The Applicants case is that the Respondent acted without authority or valid appointment by the Company, hence, no costs are payable or due from the Applicant.
3. Reliance is placed in the case of Bugerere Coffee Growers Ltd vs Sebaduka and Another, (1970) E.A. 147, where it was held that;
 - (i) “When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of directors’ meeting, and recorded in the minutes; no individual director has power to institute proceedings in the name of the company.”
 - (ii) Where an advocate has brought legal proceedings without authority of the purported plaintiff company, the advocate is personally liable to pay the costs of the suit.”
4. The Applicant’s case is that the Respondent has not produced any evidence or any letter of instructions or the Company’s Resolution by the Board of Directors to authorize the Respondent to act for it.
5. It argues that an Advocate who has no authority from the client cannot file suit on their behalf and if he does, same will be invalid, an act without authority.
6. In Civil Case No. 3791 OF 1993: L Z Engineering Construction Ltd vs Trade Bank Ltd and 2 Others, the court held that an advocate having not been authorized or appointed by the lawful directors could not have been lawfully authorized or appointed to act on behalf of the company; the court proceeded to strike out the pleadings, filed by the said Advocates on behalf of the Company, and ordered Messrs Kaplan and Stratton Co. Advocates to pay the costs personally.

The Applicants Submissions:

Whether the Respondent acted without authority of the Applicant company, and/or without valid instructions

7. The Applicant submits that the Respondent acted without authority or valid appointment by the Company, hence, no costs are payable or due from the Applicant, in the case of Bugerere Coffee Growers Ltd vs Sebaduka and Another, (1970) E.A. 147, it was held that
 - (i) “When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of directors’ meeting, and recorded



in the minutes; no individual director has power to institute proceedings in the name of the company.”

- (ii) Where an advocate has brought legal proceedings without authority of the purported plaintiff company, the advocate is personally liable to pay the costs of the suit.”
8. It argues that the Respondent has not produced any evidence or any letter of instructions or the Company Resolution by the Board of Directors did not authorize the Respondent to act, as duly appointed as Advocates to act for it.
 9. It argues that there is no valid authority by the Company authorizing any of its employees, officers or its agents to act or otherwise represent it in these or the parent proceedings.
 10. In High Court at Nairobi Civil Case No. 3791 OF 1993: L Z Engineering Construction Ltd vs Trade Bank Ltd and 2 Others, the court held that an advocate having not been authorized or appointed by the lawful directors could not have been lawfully authorized or appointed to act on behalf of the company; the court proceeded to strike out the pleadings, filed by the said Advocates on behalf of the Company, and ordered Messrs Kaplan and Stratton Co. Advocates to pay the costs personally.
 11. In the same case L.Z. Engineering Construction Ltd vs Trade Bank Ltd, HCC Civil Case No. 37 of 1993, Powell J, stated the law as follows, at page 63, “I agree with Mr. Gautama and Mr. Manek that specific authority of the company is needed for the Advocate to act for a Company in litigation. See Halsbury’s Law of England, 4th Edn. Volume9, Paragraph 114 at page 83.
 12. Further, in East African Portland Cement Co. Ltd Vs Capital Markets Authority and 4 Others (2014) eKLR, the High Court had this to say of Advocates instituting suits on behalf of parties, First, as an advocate and an officer of the court, the Counsel responsible for filing this Petition was fully aware, or should have been aware, of the requirements of law with regard to filing of suits by companies, and had a duty to advise his clients not to file proceedings if there was no authority to do so. It went on to state the law as regards who pays the costs in such a case: “ With regards to cost, on the authority of the decision is Affordable Homes Africa Ltd vs Ian Henderson and 2 Others, and Bugerere Coffee Growers Ltd vs Sebaduka and Another (Supra).....

“I am satisfied that the Counsel responsible for filing the present Petition as well as the Director and Secretary who swore the Affidavits in Support of the Petition without the requisite authority from the Company should bear the Costs of the Petition Without recourse to the Company’s funds. I am so satisfied for several reasons.”
 13. It submits that the record shows that a number of law firms purported to appear or represent the Applicant Company herein. There is the firm of Meritad Law Africa LLP, there is Saende and Ocholla Advocates, And Saende Law LLP. There is no evidence of any authority by the company, herein Applicant, appointing any of the said Advocates.
 14. In the instant case, the Plaintiff did not avail any written document before court to show that the filing of the suit was authorized by the Company under Seal.The Plaintiff did not produce any minutes or formal Resolution of the Company appointing M/s Ombachi and Co. Advocates to sue on behalf of the Plaintiff Company, Courts have held time and again that seeking such authority before institution of a suit is mandatory.
 15. It is submitted that the proceedings herein were conducted without the authority of the company as required in law creating an illegality and a nullity which cannot found a claim for costs against the Applicant Company.



16. It is submitted further that no service was effected of the pleadings in this cause upon the Applicant Company. There is not a single Affidavit of Service filed or on record to confirm the service of the Advocate Client, Bill of Cost, the Ruling of the Taxing Masters, the Application for Judgment, Decree, Warrants of Attachment and Sale, Notification of Sale of Property as required by law.
17. The Applicant submits that to that extent the Applicant Company has been condemned unheard, hence there is need to set aside all the proceedings herein against the company for want of service.
18. Besides it is submitted, the Respondent did not comply with the mandatory provisions Order 22, Rule 48 of the Civil Procedure Rules, which provides that Order 22, Rule 48(2) "A copy of the Order shall be affixed on a conspicuous part of the property"

"Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from the property, and by proclaiming the attachment by beat of drum or other customary mode, or, in default thereof, by affixing a copy of the warrant of attachment in a conspicuous part of the property, and by affixing another copy thereof on the outer door or other conspicuous part of the usual place of residence of the judgment-debtor within the jurisdiction of the court.

1. The court may also, if it thinks fit, appoint a receiver to manage the property during the period of attachment.
2. A copy of the order of attachment shall be served on the judgment-debtor, and if he fails to obey the order, he may be proceeded against as a contumacious judgment-debtor.

Order 22, Rule 48 (2) "A copy of the order of attachment shall be served on the judgment-debtor, and if he fails to obey the order, he may be proceeded against as a contumacious judgment-debtor."

19. Furthermore, it is submitted ,no directions were given by the court, as is Mandatory, pursuant under Order 22, Rule 57 (5) of the Civil Procedure Rules, 2010 (Kenya) which states that "Directions shall be given as to the mode and expense of advertising the sale, which expense shall be the costs of the sale. No valuation of the subject property facing the auction was conducted.
20. This provision ensures that immovable assets (like land or buildings) are protected from disposal while enforcing a court judgment. The Respondent did not conduct any valuation of the subject property facing the threatened auction prior to advertising the same for auction.
21. On another point, it submits that the Taxing Master fell into grave error of judgment in failing to determine that he had no jurisdiction to entertain the Advocate Client Bill of Costs, where the client, in this case did not authorize the Respondent.
22. Indeed the Taxing Master, as was held in the case of V. Chokaa and Company Advocates vs. The County Government of Mombasa and Mugambi and Company Advocates. Vs John Del Ogwayoe KLR that the Taxing Master has no jurisdiction to determine the existence of a retainer, that his/her jurisdiction is limited to taxing the items in the Bill of Costs where there is an established Advocate - Client relationship.
23. It is argued that in this case there was no established Advocate client relationship thereby depriving the court of jurisdiction to access the costs in the Advocate client Bill of costs.



24. It is submitted that the Taxing Master was under a duty to determine or establish that the Applicant Company and the Respondent had Advocate-client relationship in law, before proceeding to tax the Bill. They submit that there exists no Advocate-Client relationship between the Respondent and the Applicant herein.
25. Reliance is placed in the case of *Kithi and Company Advocates vs Electoral Commission of Kenya (Now Independence Electoral Boundaries Commission of Kenya of Kenya (IEBC) EKLK (2021)* wherein the Taxing Master /Deputy Registrar of the High Court addressed the issue of jurisdiction of the Taxing Officer, and determination or retainer between ECK/IEBC and the Advocates.
- The Learned Judge held that “Having found that there was no retainer agreement or instructions between the parties herein I find that the Applicant has no “locus standi” to bring a Bill of Costs”.
- In the circumstances the Applicant Law firm Kithi and Company Advocates would not be entitled to have a Ruling on the Bill of Costs. The Bill was struck out or dismissed for want of a valid instructions from the company. In the instant case, the Respondent had valid instructions from the company, the Applicant hence is not entitled to any Ruling assessment of costs in the circumstances.”
26. Similarly, in the case of *P.I Samba and Company Advocates vs Taru Kancheri Ltd, (2025) KEELC 1223 (KLR), MISC. Application No. B.170 of 2022*. The High Court addressed the same issue of jurisdiction of the Taxing Master, and upheld the decision of the Taxing Officer discussing the Advocate client Bill of Costs on same grounds as in the in the instant Application. In arriving at the decision, the High Court at paragraphs 17, 18, and 19, held as follows:
- ‘There is one well established fundamental principle in our law that a company is a distinct legal personality independent of its directors and shareholders.’ I agree with the findings of the Taxing Master in her impugned Ruling delivered on 20th November 2023 that the clients, if at all, such instructions were not the entities sued as the 1st and 2nd Respondents. The Advocate/client has not proved that the Respondents instructed her to act as their Advocate as alleged. I find no reason whatever to interfere with Ruling of the Taxing Master dated on 20 the November 2023.”
27. In addressing the issue of interest, it submits that Section 26 of the *Civil Procedure Act* cap 21, Laws of Kenya provides for payment of reasonable interest at the courts discretion.
28. In the absence of representation for the company, the interest awarded in the impugned Decree herein is unreasonably high being 14% per annum and contrary to public policy. The same section 26 provides that where a Decree is silent with respect to the payment of interest from the date of the Decree to the date of payment, the court shall be deemed to have ordered interest at 6% per annum.
29. It urges the court to find and hold that, even assuming that the impugned Decree or Ruling of the taxing master is unassailable which is denied, as submitted hereinabove, interest claimed or accrued at the rate of 14% per annum is manifestly excessive, unjust and unconscionable.
30. The same being more than double the interest at court rates of 6%, as well as way above the commercial bank rate. It submits that an award of not more than 6% interest at court rates and 6% bank rates would have been reasonable, if the unlikely event that the Respondent was found to be entitled to costs.
31. The interest charged on the impugned Decree at 14% per annum amounts to irregular claim, so exorbitant and punitive that it offends the conscience of equity, justice whose end result is miscarriage of justice through unjust enrichment of the Decree holder, Respondent.



The Respondent's Case;

32. It is its case that it obtained a Certificate of Taxation on 2nd November 2018 for the sum of 15,506, 385. Subsequently, through an Application made in court dated 28th January 2019 judgment was entered on 8th April 2019 for the sum of 15,506 385 together with interest at the rate of 14% per Annum from 8th April 2019 until payment in full.
33. The Applicant was represented in the proceedings as can be clearly seen on the face of the Decree given on April 2019 and has since then had advocates on record including the current advocate who filed a Notice of Change of Advocates.
34. Since 25th February 2015 to date, have never raised the issue of want of Authority or that the Respondent was not authorized to act for the company.
35. The company has always been represented by a firm of very experienced advocates in these proceedings.
36. He has not received any funds from the unidentified, nameless and faceless officer of the Respondent Company who is hiding behind the name of a respected senior advocate Paul Muite S.C.
37. The Applicant was the one on record and the issues regarding fees payment to lead counsel and counsel on record are clear and counsel for the Applicant ought to advise his clients properly.
38. It is its case that no evidence has been tendered of any such payments and no reason has been proffered as to why this was not brought to the attention of the court by the Respondent in the year 2019.
39. Out of the decretal sum, the Respondent has only paid a sum of 3,307,598 of which the last payment was made on 13th February 2020. It argues that it is therefore rather silly of the Respondent /Applicants herein to pay part of the decretal sums on the one hand only to turn around more than 5 years later to say that they were not served or the advocates they have /were paying did not have the authority.
40. The Applicant has not explained or laid any basis either factual or in law to warrant the court to even consider extending time to enable them file a reference against the certificate of costs out of time.

Respondent's Written Submissions;

41. In responding to the question whether the Respondent Acted without Authority of the company and/ or without valid instructions it submits that.
42. This challenge is being brought over ten years after the case was filed in court, eight years after the last instalment was paid by the Applicant and six years after the Court entered judgment against the Applicant herein.
43. There is no reason offered by the Applicant why this challenge was not made before 8th April 2019 or on 8th April 2019 as from the face of the decree annexed in the court, the Applicant herein was represented by an advocate who appeared before Justice P. Nyamweya on 8th April 2019.
44. The Applicant herein has annexed a letter dated 13th May 2020 to the Applicant Company referencing these proceedings and the taxation as proof that part of the money has been paid, in the same month he is claiming want of Authority by the Respondents to act.
45. To purport to raise the issue now is an abuse of the courts process. The subsequent payment of part of the decretal sum by the Applicant puts to rest any argument from the Applicant on the issue of instructions. What were they paying for?



46. The doctrine of Estoppel works against the Applicants in this respect. The payment of some of the debt by the Applicant estops them from challenging the same.
47. In addressing the issue whether the Applicant was represented in the proceedings by a duly appointed firm of Advocates the advocate (now) on record did file a Notice of Change of Advocates Dated 30th September 2025 in this matter.
48. It argues that there is no evidence shown to this court that the Applicant has filed any complaint against the advocates for acting without authority. The Same advocate has consistently appeared in this matter until the current advocate filed a Notice of Change of Advocates.
49. The two affidavits filed by the Applicant sworn by Mohamed Fizaan Mohamed Ashraf Abdulla do not contain any averment that Mr. Saende advocate acted without authority.
50. It submits that the Turquand Rule or the doctrine of Indoor management protects third parties dealing with a company by allowing them to assume that that the company's internal procedures and requirements have been properly followed.
51. The Applicant had an opportunity to challenge this position when it appeared through Counsel before Justice P. Nyamweya J on 8th April 2019.
52. The Applicant did not file an appeal against the rate of interest in 2019 and it is an abuse of the process of the court to raise it at this stage.
53. By failing to settle the decree, interest was bound to accrue and the Decree having specified the rate applicable, it is not in the place of the Applicant to make personal lamentations about it.

Analysis and determination;

The issues for determination;

1. Whether or not the Applicant has made out a case for the grant the other sought
2. Who shall be at the cost?

Whether or not the Applicant has made out a case for the grant the other sought.

54. The court notes that the main reason why the Applicant has moved the court is because it argues that the company did not instruct the Advocates to act for it in the matter. It argued that there was no company/client advocate's relationship and the issue of legal fees obligation doesn't arise.
55. The court notes that the certificate of taxation dated 2nd November 2018 and the Decree dated 18th April 2019 clearly have the Respondent's name as the Applicant.
56. What presents from the evidence before the court looks like the Applicant was being represented by the Exparte Applicant as its advocates and now the Applicant wants to retract from a client advocate relationship so as to avoid settling what it owes the Applicant.
57. The Applicant voluntarily admits that it made payments to Paul Muite SC at some point. It further confirmed that it made other payments to the current Advocates.
58. It raises an argument that the amount paid to Paul Muite SC cannot be ascertained because the payments were made by one of the deceased directors of the company in his personal capacity. The court curiously notes that the Applicant did not find it necessary to get an affidavit from Paul Muite SC who would have explained the payments.



59. The court is satisfied that the Applicant made some payment to the Respondent as evidenced in the forwarding letter dated 29th November 2019. According to the Respondent, the Applicant has only paid a sum of 3,307,598 of which the last payment was made on 13th February 2020.
60. The court confirms that there is an email dated 15th October 2025 sent by Saende Advocate to the Applicants which gives a breakdown of payments that were made to the Respondent in relation to the amount due to the Respondent.
61. In the Supplementary Affidavit the Applicant points out that payments have been made and that there is an issue of the reconciliation of accounts.
62. The above could not have happened if the company had not instructed the Respondent to act for the company.
63. It can be concluded from the above that indeed the Applicant was in a professional relationship with the Respondent. It is clear that the Applicant all along knew of the existence of this case.
64. The Doctrine of Estoppel bars the Applicant from arguing that it did not instruct the Respondent to act for it.
65. The Applicant advances the argument that there was no board resolution that instructed the Respondent to represent the company in the suit. On a balance of probabilities this court is of the view that there was a client advocate relationship in existence between the Respondent to whom payment was being made.
66. The Applicants argues that it has made part payment of the decretal sums on the one hand then turns around more than 5 years later to say that it was not given any legal services the Respondent/advocates they have /were paying did not have the authority to act.
67. The doctrine of laches in the equality front poses the question why the Applicant has taken very long to raise the instructions issue before the court which leaves the court wondering about the bonafides of the Application.
68. No tenable explanation is being advanced to persuade the court to allow the Application to be set aside the decree and the certificate of cost after such a long time.
69. The delay in filing the Application is very ordinate and unexplained. Setting aside a judgment in the manner in which the Applicant is seeking will be prejudicial to the decree holder.
70. In *Laljibhimji Shangani Builders and Contractors — Vs- City Council Of Nairobi* (2012) eKLR where Justice J. V. Odunga emphatically stated:

“A party who without any justification decides not to follow the procedure laid down for orderly conduct of litigation cannot be allowed to fall back on the said objective for assistance and where no explanation has been offered for failure to observe the rules of the procedure the Court may well be entitled to conclude that the failure to comply therewith was deliberate.”
71. No evidence has been tendered to advance a case for the grant of an order to enlarge the time to file a reference to challenge the certificate of costs.
72. The Court of Appeal in *Mbogo Vs Shah* (1968) EA 93 that held "the discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident,



inadvertence or excusable mistake or error but it is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay justice"

73. The Application does not meet the standards nor satisfy the principles for the grant of the orders sought.

Disposition;

74. The Application lacks merit.

Order;

The Application is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2025.

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J. CHIGITI (SC)

JUDGE

