



Wahome & Akedi Advocates v Kanyotu (Sued in her own Capacity and in her Capacity as Administrator of the Estate of Stephen Njau Kanyotu) & 2 others (Miscellaneous Case E036 of 2024) [2025] KEHC 17223 (KLR) (Family) (18 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CASE E036 OF 2024
CJ KENDAGOR, J
NOVEMBER 18, 2025**

BETWEEN

WAHOME & AKEDI ADVOCATES APPLICANT

AND

MARY WANJIKU KANYOTU (SUED IN HER OWN CAPACITY AND IN HER CAPACITY AS ADMINISTRATOR OF THE ESTATE OF STEPHEN NJAU KANYOTU) 1ST RESPONDENT

JOHN KARIUKI KANYOTU (SUED IN HIS OWN CAPACITY AND IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF STEPHEN NJAU KANYOTU) 2ND RESPONDENT

CHRISTOPHER NGATA KANYOTU 3RD RESPONDENT

RULING

1. The Applicant filed a Chamber Summons application dated 19th February, 2024 which seeks the following orders;
 - a. That this application be certified as urgent and be dispensed with in the first instance;
 - b. That pending the hearing and determination of this application, an inhibition order be placed on the land register of the properties known as:
 - i. L.R. No. 166/39 (166/5/6), L.R. No. 166/40 (166/5/7) and L.R. No. 166/46 (166/5/13) registered in the name of the 1st Respondent;



- ii. L.R. No. 166/35 (166/5/2) and L.R. No. 166/42 (166/5/9) registered in the name of the 2nd Respondent;
 - iii. L.R. No. 166/45 (166/5/12) and L.R. No. 166/38 (166/5/5) registered in the name of the 3rd Respondent;
 - iv. L.R. No. 166/36 (166/5/3) and L.R. No. 166/44 (166/5/11) registered in the name of Sandra Gathoni Kanyotu whose estate is represented by the 2nd Respondent herein; and
 - v. L.R. No. 166/43 (166/5/10) registered in the name of Stephen Njau Kanyotu whose estate is represented by the 1st Respondent herein.
- c. That judgment be entered in favour of the Applicant enforcing the terms of the remuneration agreement dated 18th August, 2020 against the Respondents;
- d. That the Respondents bear the costs of this application.
2. The Respondent, in response, filed a Preliminary Objection dated 2nd May, 2024 which raised the following grounds;
- i. That there is no suit properly before the court for determination;
 - ii. That the “suit” herein, in so far as it has been instituted by way of Chamber Summons, is fatally defective, incurable and an abuse of court process;
 - iii. That the Applicant seeks substantive orders in Miscellaneous Application, the same is thus unlawful;
 - iv. That the Applicant is seeking interim order in an application without an underlying suit thus the same offends the provisions of Order 40 of the Civil Procedure Rules, 2010;
 - v. That the Application is incompetent for lack of a substantive suit and should therefore be dismissed in limine;
 - vi. That the Honourable Court lacks jurisdiction to entertain the Applicant’s application.
3. The Preliminary Objection is opposed by the Applicant, who filed grounds of opposition that raised the following grounds;
- a. That the Notice of Preliminary Objection is a non-starter and an abuse of court process meant to delay this cause;
 - b. That the application dated 19th February 2024 seeks to enforce the remuneration agreement entered between the Applicant and Respondents pursuant to Section 45 of the [Advocates Act](#);
 - c. That pursuant to Section 45 (6) of the [Advocates Act](#), an action for recovery of costs through a substantive “suit” under Section 48 of the [Advocates Act](#) is excluded for purposes of enforcing the remuneration agreement;
 - d. That by dint of the provisions and the overall reading of Section 45 of the [Advocates Act](#), an action relating to a binding remuneration agreement is commenced by way of Chamber Summons application and this Honourable Court is capable to uphold and enforce a remuneration agreement;



- e. That by virtue of Section 45 (5) of the *Advocates Act*, in particular the chaussette paragraph, an action relating to a remuneration agreement where a client has procured a change of advocates is commenced by chamber summons;
 - f. That the remuneration agreement between the Applicant and the Respondents was entered for purposes of representation in Milimani Succession Cause 1239 of 2008 in the Estate of James Kanyotu (deceased) which is still pending in this Court. Hence the present application is made in the matter;
 - g. That the prayers for restraining the transfer of the properties owned by the Respondent was sought at the ex parte stage and pursuant to the terms of the remuneration agreement hence indistinguishable from the remuneration agreement itself;
 - h. That the notice of Preliminary Objection herein sought to be heard alongside the application dated 19th February, 2024 to prevent wastage of Court precious time.
4. Both parties filed submissions to support their positions regarding the Preliminary Objection.
 5. The Respondents submitted that the agreement under Section 45 of the *Advocates Act* is a contract whose enforcement ought to be by way of a substantive suit and not a miscellaneous application.
 6. The Applicant, on the other hand, submitted that the application is brought under Section 45 of the *Advocates Act* and that under that Section, applications are initiated by way of Chamber Summons.

Analysis and determination

7. I have reviewed the application and the supporting affidavit, grounds of opposition, and submissions from both parties, along with the relevant authorities. I find that the key issue for determination is whether the suit is properly before the Court for adjudication.
8. There is no dispute regarding the existence of the agreement dated 18th August, 2020 which is the subject matter of this case. This agreement pertains to advocate-client fees amounting to Kshs. 30,000,000/=.
9. The agreement is based on an advocate-client relationship. That might have been a matter of contract, but the issues pertaining to the business of an advocate, conduct, as well as remuneration, are covered by a whole legal framework set out in the *Advocates Act* and the Advocates Remuneration Order.
10. Section 45, *Advocates Act* states that before, during, or after any legal proceedings, an advocate and their client may enter into a written agreement to determine the advocate's fee for their services. This agreement is valid and binding on both parties, provided it is in writing and signed by the client or an agent duly authorized to do so.
11. The *Advocates Act* contemplates the possibility of disputes on the enforcement of a remuneration agreement where there has been a change of advocates before the completion of the matter, as happened in this case. The Act provides two remedies to the Advocate: one in Section 45(5) and the other in Section 62A (1) of the Advocates (Remuneration) Order, which is its subsidiary legislation.
12. My understanding is that Section 62A of the Advocates (Remuneration) Order addresses situations where a bill needs to be submitted for the taxation of costs in contentious and other matters, specifically, for the costs associated with the entirety of the matter regarding which costs have been awarded at the conclusion of the case.



13. Section 45 (6) states that the costs of an advocate, under an agreement made in accordance with Section 45, are not subject to taxation or recovery actions through filing a suit as outlined in Section 48 of the Act.
14. Order 52 of the Civil Procedure Rules contains provisions related to the *Advocates Act*, and Rule 3 states as follows;
 3. Applications with respect to remuneration.
 - (1) Any application under Section 45 of the Act shall be instituted in the matter of the Act and shall be supported by affidavit.
15. Section 45 of the *Advocates Act*, which deals with remuneration agreements, necessitates that parties approach the Court through a Chamber Summons. This approach underscores the perspective that the issues arising from a valid remuneration agreement are procedural rather than a formal dispute.
16. If a valid remuneration agreement is not subject to taxation or to suit for recovery, what options does an advocate have to enforce the agreement? If no payment has been made in accordance with the remuneration settlement and no application has been filed by the client to set aside or vary the agreement, the advocate may apply to have the agreement upheld under Section 45 (5).
17. Section 45 (5) (2) of the *Advocates Act* provides as follows;
 - “2. Provided that, in the case of a client changing his advocate, the Court shall have regard to the circumstances in which the change has taken place and, unless of opinion that there has been default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing his advocate, shall allow the advocate the full amount of the remuneration agreed to be paid to him.”
18. The Court must, at the determination of the application, ascertain the validity and enforceability of the remuneration agreement. Additionally, both the applicant and the respondent must convince the court concerning any orders it should issue under Section 45(2) of the *Advocates Act* regarding this remuneration agreement once deemed valid. This section outlines the options available to the Court, including upholding, varying, substituting, or setting aside the remuneration agreement, or ordering taxation.
19. Prayer 2 of the application sought orders intended to provide relief during the pendency of the hearing and determination of the Chamber Summons application. It sought that inhibitions be placed on the properties listed, which are subdivisions of property L.R. No. 166/5 referenced in the remuneration agreement. This prayer was not granted during the consideration of the certificate of urgency, and it also did not receive an order during the subsequent directions leading to the hearing of the summons application. There is no subsequent prayer for such an order post the determination of prayer 3 of the summons application. Consequently, at this juncture, that particular prayer is rendered moot and lacking relevance for further consideration.
20. The Preliminary Objection is dismissed with costs in the cause.
21. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 18TH DAY OF NOVEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Berly

Ms. Bande, Advocate holding brief for Ms. Wangechi, Advocate for Applicant

Mr. Orege, Advocate holding brief for Mr. Nganga Mbugua, Advocate for the Respondent

