



**Biwott t/a Biwott Korir & Company Advocates v Maosa t/a Maosa & Company Advocates  
(Civil Case E338 of 2022) [2025] KEHC 17586 (KLR) (Civ) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17586 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E338 OF 2022**

**SN MUTUKU, J**

**NOVEMBER 24, 2025**

**BETWEEN**

**JOSEPH KORIR BIWOTT T/A BIWOTT KORIR & COMPANY  
ADVOCATES ..... PLAINTIFF**

**AND**

**THOMAS MAOSA T/A MAOSA & COMPANY ADVOCATES ..... DEFENDANT**

**RULING**

1. On 18<sup>th</sup> November 2025, this matter came up for hearing of the Notice of Motion dated 6<sup>th</sup> August 2025 as directed on 3<sup>rd</sup> November 2025. However, hearing did not proceed to hearing for reasons that Mr. Otieno, appearing for the Applicant told the court that the Applicant was not comfortable with this court handling this matter because this court made pronouncements which are averse to the Applicant. Mr. Otieno told the court that it seemed that the court had made up its mind on the issues raised by the Applicant. He asked this court to re-allocate the file to another judge for hearing.
2. Mr. Olonde responded that there is no reason to have the file allocated to another judge and that the Applicant is forum shopping and that the Applicant, through his counsel, ought to have raised this issue earlier.
3. The background of this matter, as can be discerned from the record of the court, is that this court (Ongeri, J) delivered a Judgment in favour of the Respondent in this case on 24<sup>th</sup> May 2024. Through a Notice of Motion dated 2<sup>nd</sup> May 2025, the Defendant sought stay of execution of the judgment dated 24<sup>th</sup> May 2024.
4. That application was determined and declined vide a Ruling delivered on 24<sup>th</sup> June 2025. The Defendant filed another application, Notice of Motion, dated 6<sup>th</sup> August 2025. That application sought, inter alia, an order for stay of execution of the judgment and decree of the Court delivered



on 24<sup>th</sup> May 2024 by Hon. Lady Justice Ogeri, pending the hearing and determination of that application. The Application, further, sought review and setting aside of the orders issued in the Ruling delivered on 24<sup>th</sup> June 2025.

5. Through directions issued on 7<sup>th</sup> August 2025, this court declined to grant stay of execution of the judgment delivered on 24<sup>th</sup> May 2024 in the interim for reasons that this court had declined to grant stay of the execution of that judgment in the ruling delivered on 24<sup>th</sup> June 2025.
6. It is that order that has prompted Mr. Otieno to seek, in a veiled way, recusal of this court from hearing this matter for having made pronouncements declining to grant stay.
7. I have considered this matter. I find the reasons given to have this matter handled by another court (judge) insufficient. I have considered the directions of this court issued on 7<sup>th</sup> August 2025. What is stated in the order issued on that date is factual. This court did decline to issue an order for stay of execution in the interim for the reasons that this court had declined to order stay in its earlier ruling of 24<sup>th</sup> June 2025.
8. The Defendant has not demonstrated that this court acted outside the facts as can be seen from the court file records.
9. I am aware that Mr. Otieno also sought to be allowed to withdraw his application dated 6<sup>th</sup> August 2025 with no order to costs. Mr. Olonde did not oppose that application but insisted that he will be seeking costs of that application.
10. For the above reasons, I decline to re-allocate this file to another judge in the Civil Division for reasons that the Defendant/Applicant, through his counsel, has not demonstrated to the satisfaction of the court, that the orders of this court made on 7<sup>th</sup> August 2025 are prejudicial to the Defendant.
11. Further, following the application to withdraw the Notice of Motion dated 6<sup>th</sup> August 2025, and there being no opposition to that application save for costs, I hereby allow the Defendant/Applicant to withdraw that application but award costs of that application to the Plaintiff/Respondent.
12. Orders shall be issued accordingly.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> NOVEMBER 2025.**

**S. N. MUTUKU**

**JUDGE**

In the presence of:

Mr. Olonde for Plaintiff/Respondent

Mr. Otieno for Defendant/Applicant

