



Gatheru Gathemia & Co Advocates v Ngenda Location Ranching Co Ltd (Miscellaneous Application E145 of 2022) [2025] KEHC 18259 (KLR) (8 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18259 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E145 OF 2022**

**PN GICHOHI, J
DECEMBER 8, 2025**

IN THE MATTER OF ADVOCATES AND CLIENT BILL OF COST

BETWEEN

GATHERU GATHEMIA & CO. ADVOCATES APPLICANT

AND

NGENDA LOCATION RANCHING CO LTD RESPONDENT

RULING

1. For determination by this Court is the Applicant's Notice of Motion dated 10th April, 2025, brought under Article 159 of the Constitution of Kenya, Order 22 rule 9 (a) and (b), 48 (1) of the Civil Procedure Rules and sections 1, 3 and 3A of the Civil Procedure Act, Section 68 of the Land Registration Act and the inherent jurisdiction of the Court, seeking for Orders;-
 1. That this application be certified as urgent and service be dispensed with in the first instance.
 2. That pending the hearing and determination of this application, the Respondent, being a judgment debtor, be prohibited by way of an inhibition from transferring or charging the property, identifiable as Land Reference No. 6290 (Title Number I.R. 17964), in any way and all persons be prohibited from taking any benefit from any purported transfer or charge.
 3. That this Honourable Court do adopt the Orders and declaration by Justice Kariuki issued in "Misc. No.14 of 2022-Gatheru Gathemia-vs-Ngenda Location Ranching Co. Ltd on 18th March, 2025 that the Applicant has lien over the title known as Land Reference No. 6290 (Title Number I.R. 17964).
 4. That the Judgment-Debtor's subject property known as Land Reference No. 6290 (Title Number I.R. 17964) to be attached and sold by public Auction to recover the total



outstanding decretal sum of Kshs. 2,664,804.02/= together with interest at 14% per annum from 1st March, 2023 and Costs incurred until payment in full.

5. Costs of this application be recovered from the sale of the property.
2. The application is based on the grounds on the face of the application and the Supporting Affidavit of Gatheru Gathemia Advocate sworn on even date.
3. He states that the Applicant successfully taxed an Advocate-Client Bill of Costs on 25th July 2023, at Kshs. 2,337,547.44. Subsequently, a Certificate of Taxation was issued in August 2023 and that this Court adopted it as a Judgment of the Court on 14th February, 2024.
4. The Applicant states that the Court awarded interest at 14% from 1st March, 2023, bringing the total outstanding sum to Kshs. 2,664,804.02. He asserts that the Respondent has failed to settle this decretal sum, which remains fully outstanding.
5. The Applicant further depones that they are in physical possession of the Respondent's Certificate of Title for Land Reference No. 6290 (Title Number I.R. 17964) . That this possession was acquired lawfully through the Advocate-Client retainer while representing the Respondent in various legal matters, including cases involving Zenith Realtors Ltd, Hari Gakinya, and multiple conveyancing matters in Narok. The Applicant claims a right of lien over this title until the outstanding legal fees are paid.
6. Additionally, the Applicant relies on a decision by Justice Kariuki on 18th March, 2025, in a related matter (Narok HCMISC Application No. 014 of 2022 and states that the Court held that the Applicant has a valid lien over the subject property and ordered it sold to satisfy legal fees.
7. He argues that they have no other means to recover the taxed fees and is apprehensive that if the title is released without an inhibition or attachment order, the Respondent will sell or charge the property to the Applicant's detriment. Therefore, the Applicant seeks to attach and sell the property to recover the debt.
8. He states that service upon the Respondent's advocates, M/s Waiganjo & Co. Advocates was effected by Norbert Moth, a Court Process Server as per the two Affidavits of Service sworn by him, elaborating that in the first instance, service was on 11th April, 2025, at 10:15 PM via the firm's official email address attaching the Notice of Motion and Court Directions.
9. That in the second instance, the process server confirms proceeding to the physical offices of Waiganjo & Co. at Gate House, Nakuru, on 5th May, 2025 where he served the Notice of Motion and Certificate of Urgency upon a secretary who accepted service by stamping and signing the documents at 1:18 PM.
10. The Applicant states that despite service, the Respondent did not file any response, thus the application proceeded undefended.

Submissions

11. The Applicant recounts the procedural history, detailing that the Advocate-Client bill was taxed in July 2023, and a Certificate of Taxation was issued in August 2023. This certificate was adopted as a judgment of the Court in February 2024 with interest awarded. The Applicant confirms holding the Respondent's title (I.R. 17964) in lien due to professional services rendered in multiple listed cases, including matters in Nakuru and Narok courts involving various parties and conveyancing transactions.



12. The Applicant draws this Court's attention to a ruling by Justice Kariuki on 18th March, 2025, in a related Narok file. He states that in that ruling, the Judge declared that the Applicant holds a valid lien over the subject property and ordered its sale to satisfy a different debt.
13. The Applicant argues they have no other means to recover the taxed fees in the current matter and fears the Respondent will dispose of the property if the title is released.
14. He cites the applicable law, specifically noting that an order for attachment is appropriate as the costs have been taxed. They rely on Section 48(1) of the *Advocates Act* regarding the recovery of costs and Order 52 Rule 4 of the Civil Procedure Rules regarding the court's power to make orders where an advocate-client relationship exists.
15. To support the claim of lien, the Applicant argues that an advocate must demonstrate an advocate-client relationship and that costs have been incurred. They cite Kenya Commercial Bank Limited v Rachier & Amollo Advocates [2024] KEHC 12108 (KLR) which established that a general lien is not restricted to costs regarding the specific property in hand but extends to any property in the advocate's possession owed to the general balance of account.
16. The Applicant concludes by reiterating that they hold the title as security in lieu of unpaid, taxed fees. Asserting that the Taxation Certificates have not been set aside or reviewed, he prays that the application herein be allowed as prayed.

Analysis and Determination

17. The issues for determination before this Court are two-fold:
 1. Whether the Applicant's entitlement to an Advocate's Charging Lien over the Respondent's title, Land Reference No. 6290 (Title Number I.R. 17964), has been formally ascertained by a competent court.
 2. Whether the Court should grant an order for the attachment and sale of the said title by public auction to recover the outstanding decretal sum of Kshs. 2,664,804.02, together with interest at 14% per annum from 1st March, 2023, and costs incurred.
18. Before a court can sanction an order for the attachment and sale of a client's property for the recovery of an advocate's fees, particularly in an instance such as this, the Court must be satisfied that the charging lien has been formally and conclusively ascertained and declared in accordance with the law.
19. The relevant legal framework is stipulated in Section 52 of the *Advocates Act*, Cap 16, as read with Order 52 Rule 6 of the Civil Procedure Rules, 2010. Section 52 of the *Advocates Act* provides:

“Any court in which an advocate has been employed to prosecute or defend any suit or matter may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit or matter, and may make orders for the taxation of the costs and for raising money to pay or for paying the costs out of the property so charged as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate: Provided that no order shall be made if the right to recover the costs is barred by limitation.”



20. Order 52 Rule 6 of the Civil Procedure Rules provides that:-
- “(1) An application for a charging order under section 52 of the Act shall be made in the suit or matter by summons in chambers supported by affidavit.(2)The application shall be served on the client.”
21. It is a mandatory requirement that an advocate must apply to the Court for a specific order not only to declare the lien but also to enforce it, which often culminates in an order for the sale of the charged property for the recovery of unpaid fees, only after the entitlement has been declared and the costs taxed.
22. In the present application, the Advocates fees have been taxed and endorsed as judgment of this Court. Thus, the only thing pending is the execution for recovery of the said fees.
23. The Applicant/Advocate is not seeking for this Court to determine and declare the charging lien de novo. Instead, the Applicant seeks the adoption and enforcement of rights allegedly granted by the High Court in Narok Miscellaneous Application Number E014 of 2022 between the Applicant and Ngenda Location Ranching Company Limited.
24. In support of this request, the Applicant annexed a document purported to be an Order issued on 18th March, 2025 (annexed at page 33 of the Application. This Court has examined the document against the definition of a binding judicial decision, specifically a Decree. Section 2 of the Civil Procedure Act defines a "decree" as:
- “the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final; it includes the striking out of a plaint and the determination of any question within section 34 or section 91, but does not include—”
25. A formal decree, being the culmination of an adjudication, must be signed and sealed by the court issuing it to be recognized as a binding and enforceable order. The endorsement of the decree is also a necessary formal step to confirm its authenticity and legal effect for execution purposes.
26. The document annexed by the Applicant lacks the requisite signature, seal, and endorsement. It, therefore, cannot be termed a decree as defined under Section 2 of the Civil Procedure Act and, consequently, does not possess the necessary legal effect to be adopted and enforced by this Court.
27. Crucially, the Applicant failed to annex the substantive Ruling from Narok High Court which allegedly declared the lien over the subject property. Without a formal, signed, and sealed judicial pronouncement, this Court cannot ascertain the Orders or the rights of lien purportedly bestowed upon the Advocate.
28. Consequently, the prayer seeking the sale of the client’s property, without satisfying this Court of the legally ascertained right of lien, is not sustainable. The Applicant has failed to provide conclusive evidence of a formally declared and ascertainable Advocate’s Charging Lien over the property Land Reference No. 6290 (Title Number I.R. 17964).
29. Accordingly, the Application dated 10th April 2025 is hereby struck out with no orders to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 8TH DAY OF DECEMBER, 2025.

PATRICIA GICHOHI



JUDGE

In the presence of:

MCronald for Applicant

N/A for Respondent

Kamau, Court Assistant

