



REPUBLIC OF KENYA



**Gatheru Gathemia & Company Advocates v Ngenda Location
Ranching Company Limited (Miscellaneous Application E146 of 2022)
[2025] KEHC 18271 (KLR) (8 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E146 OF 2022
PN GICHOHI, J
DECEMBER 8, 2025
IN THE MATTER OF ADVOCATES AND CLIENT BILL OF COST**

BETWEEN

GATHERU GATHEMIA & COMPANY ADVOCATES APPLICANT

AND

NGENDA LOCATION RANCHING COMPANY LIMITED RESPONDENT

RULING

1. By a Notice of Motion dated 10th April, 2025 and 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, the Applicant seeks the following Orders;-
 1. Spent.
 2. This Honourable Court do adopt the Orders and declaration by Justice Kariuki issued in Misc. Application 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).
 3. 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. 633,476/= together with interest and Costs awarded until payment in full.
 4. 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 Notice of Motion and the Supporting Affidavit sworn by the Gatheru Gathemia Advocate on even date.
3. The Applicant states that he is seeking to enforce a judgment arising from an Advocate-Client Bill of Costs. That on 25th July, 2023, the bill was taxed at Kshs. 633,476, and a Certificate of Taxation was subsequently issued on 4th August, 2023. This certificate was adopted as a judgment of the court on 14th February, 2024, by Hon. Lady Justice Patricia Gichohi, who also awarded interest at 14% per annum from 1st March, 2023. The Applicant contends that the Respondent has failed to pay this decretal sum, which remains fully outstanding.
4. He avers that they are in physical possession of the Respondent's title for Land Reference No. 6290 (Title Number I.R. 17964). This possession was acquired lawfully through their retainer as advocates for the Respondent in several legal matters, including cases involving Zenith Realtors Ltd, Hari Gakinya, and various conveyancing transactions in Narok. The Applicant asserts a right of lien over this title document as security for the unpaid legal fees across these multiple files.
5. Furthermore, the Applicant relies on a recent ruling by Justice Kariuki on 18th March, 2025, in a related case (Narok High Court MISC. Application No. E014 of 2022). That in that ruling, the court affirmed the Applicant's lien over the same subject property and ordered its sale to satisfy different taxed costs. The Applicant argues that attaching and selling the property is the only viable means to recover the taxed fees and expresses apprehension that the Respondent might sell or charge the property if the title is released without such an order.
6. The Applicant states that the application was served upon the Respondent as evidence by Affidavit of service sworn by Norbert Moth, a Court Process Server, confirming service of the Notice of Motion 10th April, 2025 and Court Directions dated 13th April, 2025 upon the Respondent's advocates, M/s Waiganjo & Co. Advocates on 11th April, 2025 at 10:12 PM via the firm's official email address (xxx@gmail.com).
7. The Applicant states that despite service, the Respondent herein did not file any response to the application, as such the application proceeded unopposed.

Submissions

8. The Applicant emphasises that despite the Respondent being duly served, he has failed to file any response or objection. Consequently, that the application is unopposed and should be allowed.
9. Detailing the procedural history of this matter, the Applicant states that the Advocate-Client bill was taxed in July 2023 and adopted as a judgment in February 2024. The Applicant confirms holding the Respondent's title (I.R. 17964) as a lien due to unpaid fees arising from professional services rendered in multiple cases, including matters in Nakuru and Narok courts. They list specific case numbers and amounts awarded in their favour to demonstrate the extent of the debt and the validity of their possession of the title.
10. The Applicant argues that he is relying on ruling by Justice Kariuki dated 18th March, 2025, which recognised their lien over the subject property and ordered its sale in a separate matter. They argue that since there is no other way to recover the taxed fees, and given the valid retainer and taxation certificates, the court should allow the attachment and sale. They cite the *Advocates Act* and Civil Procedure Rules to support their right to recover costs and exercise a lien.
11. He elaborates on the concept of a general lien, citing case law the case of Kenya Commercial Bank Limited v Rachier & Amollo Advocates [2024] KEHC 12108 (KLR) to argue that a lien is not



restricted to costs regarding the specific property in hand but extends to the general balance of account. They assert that having physical possession of the title entitles them to hold it as security until all costs are paid.

12. The Applicant concludes by reaffirming that the Certificates of Taxation have not been challenged and that the application is meritorious. They pray for the court to allow the motion as pleaded to enable them to recover the outstanding legal fees.

Analysis and Determination

13. 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 total outstanding decretal sum of Kshs. 633,476/= together with interest and Costs awarded until payment in full.
14. 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.
15. The relevant legal framework is a right stipulated by 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.”
16. Further, 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.”
17. 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.
18. In the present application, it is ascertained that the Advocates/ Applicant herein acted for the Respondent and its fees were ascertained through taxation proceedings.
19. The final taxed sum was endorsed by this Court as judgement of the Court. Thus, the only thing pending is the execution for recovery of the said fees.



20. The Court also notes that 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 (the Respondent herein). In support of this request, the Applicant has annexed at page 24 of the application, a document purported to be an Order issued on 18th March, 2025.
21. 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" to mean;-
- “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-
- (a) any adjudication from which an appeal lies as an appeal from an order; or
- (b) any order of dismissal for default:”
22. A formal decree, being the culmination of an adjudication, must be signed and sealed by the court issuing it to be recognised 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.
23. In this case, 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.
24. Crucially, the Applicant failed to annex the substantive Ruling from the 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. 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.
25. 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). 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 the Applicant

N/A for Respondent

Kamau, Court Assistant

