



Kahia & Company Advocates v Nzioka (Environment and Land Miscellaneous Case E034 of 2023) [2025] KEELC 18323 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18323 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E034 OF 2023
MN KULLOW, J
DECEMBER 11, 2025

BETWEEN

KAHIA & COMPANY ADVOCATES APPLICANT

AND

MARGARET WANJIRU NZIOKA RESPONDENT

RULING

1. The matter coming before the Court is the Respondent’s Notice of Preliminary Objection dated 3rd February 2025 through the firm of Maosa & Company Advocates. The objection is directed at the Applicant’s application dated 23rd October 2024, which the Respondent contends is incurably defective, incompetent, and improperly before this Court. The Respondent urges that the objection raises pure points of law, capable of disposing of the application at the outset, and therefore ought to be heard and determined in limine.
2. In summary, the Respondent asserts that the application has been filed in a forum without jurisdiction, noting that on its face it appears to have been intended for filing before the Environment and Land Court at Thika. The Respondent further challenges the validity of the supporting affidavit dated 23rd October 2024, arguing that it is incomplete and fatally defective, as the jurat appears on a separate page, contrary to the *Oaths and Statutory Declarations Act* and established procedural requirements.
3. Additionally, the Respondent impugns the affidavit of Faith Kihara dated 29th August 2024, which is annexed to the supporting affidavit, on the basis that it was commissioned by an advocate who is allegedly interested in the matter, thereby offending Section 4(1) of the *Oaths and Statutory Declarations Act*.
4. The Respondent further argues that once a certificate of costs is issued by the Deputy Registrar, the same becomes a decretal sum recoverable only through a separate suit, rendering the present application procedurally incompetent. The Respondent therefore maintains that the Applicant’s application is



not only defective but also frivolous and a manifest abuse of the court process, and consequently prays that it be struck out or dismissed with costs.

Parties' Submissions

Respondent/Client's Submission

4. The Respondent submits that the Preliminary Objection dated 3rd February 2025 satisfies the test set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*, as it raises pure points of law capable of disposing of the Applicant's Notice of Motion.
5. The Respondent reiterates the five grounds forming the objection: absence of jurisdiction owing to the Notice of Motion citing the ELC at Thika, a fatally defective supporting affidavit whose jurat appears on a separate page, an annexed affidavit of Faith Kihara allegedly commissioned contrary to s.4(1) of the *Oaths and Statutory Declarations Act*, the argument that a certificate of costs is a debt enforceable only through a fresh suit, and that the application constitutes an abuse of court process.
6. On jurisdiction, the Respondent contends that the citation on the face of the impugned application refers to a forum different from this Court and that the Court should not "second-guess" counsel's intent. Reliance is placed on *Otieno & Another v IEBC & 2 Others (Petition E002 of 2022)*, where the Court held that it is not the duty of the Court to correct clerical lapses or reconstruct a party's pleadings.
7. Regarding affidavit form, the Respondent maintains that the Applicant's supporting affidavit violates statutory requirements because the jurat is on a separate page, contrary to s.5 of the *Oaths and Statutory Declarations Act*. The Respondent cites *Treadsetters Tyres Ltd v Hussein Dairy Ltd (2002)*, where an affidavit whose jurat appeared on a separate page was struck out.
8. On the affidavit of Faith Kihara, the Respondent submits that it is incurably defective because it was commissioned by an advocate with a direct interest in the matter, contrary to s.4(1) of the *Oaths and Statutory Declarations Act*. The Respondent relies on *Lee Njiru v J.K. Lokorio & Another (2019)* and *James Francis Kariuki & Another v United Insurance Co. Ltd*, where affidavits commissioned by conflicted commissioners were invalidated.
9. The Respondent further submits that the underlying taxation process is tainted, as it allegedly relied on this defective affidavit of service, and invites the Court, if necessary, to act suo motu to correct an irregularity in the taxation. Ultimately, the Respondent prays that the Applicant's Notice of Motion and the impugned affidavits be struck out with costs.

Applicant/Advocate's Submissions

10. The Applicant submits that the proceedings relate to an advocate-client bill of costs dated 9th August 2023, which was duly taxed at Kshs 291,065 and a certificate of costs issued on 17th May 2024. Following that taxation, the Applicant filed the application dated 23rd October 2024 seeking entry of judgment in accordance with Section 51(2) of the *Advocates Act*, which makes a certificate of taxation final as to the amount, unless set aside or altered by the Court.
11. The Applicant contends that this Court is the correct forum because the certificate of costs was issued in this very file, and the legal services rendered relating to Nairobi Block 119/119 were provided in Nairobi. Accordingly, the assertion that the application belongs before the ELC at Thika is said to have no legal or factual basis.



12. On the affidavit-related objections, the Applicant submits that the Respondent's complaints concerning the jurat appearing on a separate page do not render the affidavit fatally defective. Counsel argues that such irregularities are curable procedural defects under Article 159(2)(d) of *the Constitution* and Order 19 Rule 7 of the Civil Procedure Rules, which prohibit rejection of an affidavit for a mere formal defect unless prejudice is shown which the Respondent has not demonstrated. With respect to the affidavit of Faith Kihara, the Applicant asserts that it is merely an annexure, not a supporting affidavit, and that even if any irregularity existed, it would not affect the competency of the main application, which is supported by a proper affidavit sworn by the Applicant.
13. The Applicant further submits that enforcement of a certificate of costs does not require filing a fresh suit, as urged by the Respondent. Counsel relies on Section 51(2) to argue that the same court that issued the certificate may enter judgment for the sum certified, provided the retainer is undisputed.
14. The Applicant emphasises that the application is grounded in clear statutory provisions, seeks enforcement of a valid certificate of taxation, and is neither frivolous nor an abuse of process. The Applicant urges the Court to reject what it terms the Respondent's dilatory tactics, dismiss the Preliminary Objection, and grant the prayers in the application to enable the advocate to realise the fruits of taxation.

Issue For Determination

15. The sole issue is whether the Preliminary Objection is merited.

Analysis And Determination

16. I have carefully considered the Preliminary Objection, the rival submissions, and the record. A proper preliminary objection must, as stated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*, raise a pure point of law which, if upheld, is capable of disposing of the entire matter without the need to ascertain contested facts.
17. The Respondent's objection is premised on four broad grounds alleged want of jurisdiction, alleged defects in the supporting affidavits, alleged improper commissioning of an annexed affidavit, and the argument that a certificate of costs can only be enforced through a fresh suit.
18. Some of these grounds, particularly those relating to the circumstances of commissioning and the status of the annexed affidavit, require factual verification, which takes the objection outside the scope of what constitutes a pure point of law. A preliminary objection cannot be sustained where factual issues are intertwined with the points raised.
19. On jurisdiction, the Court notes that the certificate of costs giving rise to the application was issued by this Court in these very proceedings. The Applicant has invoked Section 51(2) of the *Advocates Act*, which expressly empowers the Court that issued the certificate of taxation to enter judgment thereon unless it has been set aside or altered.
20. The mere indication on the face of the impugned application suggesting filing at Thika does not, in itself, divest this Court of jurisdiction where the substantive proceedings, the taxation, and the certificate all emanated from this Court.
21. On the affidavit-related objections, the alleged placement of the jurat and the commissioning of an annexure, even if irregular, are procedural issues curable under established law and cannot, without more, invalidate the entire application at a preliminary stage.



22. The Respondent has not demonstrated prejudice arising from these alleged defects. Regarding enforcement of the certificate of costs, Section 51(2) does not mandate filing of a fresh suit, and Kenyan courts have consistently enforced certificates within the existing cause. In the result, none of the grounds raised meet the threshold of a proper preliminary objection capable of disposing of the matter. The objection is therefore without merit.

Final Orders

23. In view of the foregoing analysis, the Court finds that the Preliminary Objection dated 3rd February 2025 is devoid of merit. The issues raised therein either do not constitute pure points of law, are curable procedural irregularities, or are inconsistent with the express provisions of Section 51(2) of the *Advocates Act*. Accordingly, the Preliminary Objection is hereby dismissed.
24. The application dated 23rd October 2024 shall therefore proceed to be heard and determined on its merits. The costs of the Preliminary Objection shall be borne by the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 11TH DAY OF DECEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

N/A for the Applicant

Mr. Maosa H/B for Otieno for the Respondent

Philomena W. Court Assistant

