



Mwaniki t/a Ngugi Mwaniki & Co. Advocates v Ndungi (Miscellaneous Civil Application E315 of 2025) [2025] KEHC 18176 (KLR) (Civ) (3 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E315 OF 2025
SN MUTUKU, J
DECEMBER 3, 2025**

BETWEEN

**GACHOMO KENNETH MWANIKI T/A NGUGI MWANIKI & CO.
ADVOCATES APPLICANT**

AND

MOSES KABICHO NDUNGI RESPONDENT

RULING

The Application

1. This ruling relates to the Notice of Motion dated 10th June .2025 (the Application). For purposes of this application, the Advocate is referred to as the Applicant and the Client as the Respondent, even though the latter is the applicant in respect to this application. The Application is anchored on various provisions of the law as shown on the face of it. It was filed by Moses Kabicho Ndungi (hereafter the Respondent) who has supported the Application with the grounds set out on the body of the application and in the Supporting Affidavit sworn by the Respondent on 10th June 2025.
2. The application seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. That this Honourable Court be pleased to stay the taxation of the Advocate-Client Bill of Costs dated 7.03.2025 pending hearing and determination of the suit namely Milimani Elc Misc. No. E151 Of 2025 (moses Kabicho Ndungi Vs Gachomo Kenneth Mwaniki T/a Ngugi Mwaniki & Co. Advocates).



- d. That in the alternative to (iii) above, this Honourable Court be pleased to strike out the Advocate-Client Bill of Costs dated 7.03.2025 with costs to the Respondent.
 - e. That costs of the application be borne by the Applicant.
3. The Respondent has argued in support of the Application that at the he engaged the professional legal services of Gachomo Kenneth Mwaniki T/A Ngugi Mwaniki & Co. Advocates (hereafter the Applicant) to act for him in a sale transaction for purchase of a parcel of land measuring 0.25 acres and known as Title No. Kabete/Karura/2443 (the subject property) at a purchase price of Kshs. 6,000,000/-; that pursuant to that sale transaction, the parties agreed, orally, that the Respondent would initially pay the Applicant a sum of Kshs. 20,000/- as legal fees, and thereafter pay the balance of the legal fees of Kshs. 10,000/- upon conclusion of the sale transaction; that upon executing the sale agreement dated 26th February 2019 (Annexure “MKN-2”), the Respondent remitted a deposit of Kshs. 3,000,000/- to the vendor being part payment for the purchase of the subject property, vide RTGS transfer dated 27th February 2019 (Annexure “MKN-3”); that he subsequently forwarded a sum of Kshs. 1,000,000/- to the Applicant for onward transmission to the vendor’s advocate, as part payment of the remaining balance on the purchase price; that the Applicant upon receipt thereof, declined and/or refused to transmit the abovementioned sum to the vendor’s advocate and further declined to refund the same to the Respondent. The actions of the Applicant prompted the Respondent to lodge a complaint with the Advocates Complaints Commission against the Applicant.
 4. The Respondent has stated, further, that owing to the above turn of events, he opted to complete the sale transaction without the assistance and participation of the Applicant and that he instituted a suit, being Milimani ELC Misc. No. E151 of 2025 Moses Kabicho Ndungi v Gachomo Kenneth Mwaniki T/a Ngugi Mwaniki & Co. Advocates against the Applicant seeking to recover the sum of Kshs. 1,000,000/-, which suit is still pending before the Environment and Land Court (ELC).
 5. The Respondent has stated that he learned later that the Applicant had filed an Advocate-Client Bill of Costs dated 7th March .2025 (the Bill of Costs) in the present matter, which in his view, is not only premature but also incompetent before this court for the reasons that the subject matter in dispute falls within the purview of the ELC; that the legal fees owed is not disputed in order to warrant the Bill of Costs and that the said Bill of Costs contravenes the provisions of Section 69(1), (2) and (3) of the Advocates (Remuneration) Order.

The Replying Affidavit

6. The Application is opposed through the Replying Affidavit sworn by the Applicant on 29th July 2025. The Applicant has deposed that following the complaint before the Advocates Complaints Commission, the Complaints Tribunal directed him to first lodge the Bill of Costs to pave way for taxation thereof, before the issues arising therein could be addressed.
7. The Applicant denied the existence of an agreement between the parties herein on the subject of legal fees in respect of the sale transaction, adding that there is nothing in law which prohibits him from filing a Bill of Costs in a bid to seek remuneration of his legal fees, arguing that he has a lien on legal fees owed by the Respondent.
8. The Applicant deposed that should the Court find that the Bill of Costs is incompetent, then the court should transfer it to the proper court for consideration. Otherwise, the Applicant urged that this application should be dismissed with costs.



Submissions

9. The Application was canvassed through written submissions. In his submissions, the Respondent reiterated the circumstances giving rise to this dispute and submitted that the ELC suit would constitute the proper forum for determining the issue of legal fees as well as the dispute pertaining to the sale agreement between the parties herein. The Respondent referred to Order 52, Rule 4 of the Civil Procedure Rules (CPR) which sets out the manner and procedure for moving the court in instances where an advocate/client relationship either exists or existed at any one point and submitted that it is the ELC which has jurisdiction to entertain disputes relating to land and the environment and therefore, it would be necessary for this court to stay the taxation proceedings herein pending hearing and determination of the ELC suit.
10. The Respondent argued, in the alternative, that this court should deem the Bill of Costs premature in view of the proceedings pending before the Advocates Complaints Commission and strike out the said Bill of Costs for having been filed in the wrong forum.
11. The Respondent submitted, further, that the Bill of Costs offends the mandatory provisions of Section 69(1), (2) and (3) of the Advocates Remuneration Order which sets out the manner in which a bill of costs ought to be drawn; that while the afore-cited provision requires a bill of costs to contain five (5) columns, the Bill of Costs herein contains only four (4) columns; that in addition, the Bill of Costs lodged in the present matter does not specify the disbursements and that the Applicant seeks exaggerated costs of Kshs. 1,144,572/- pertaining to the sale transaction, without basis.
12. In his submissions, the Applicant, has argued that the Bill of Costs was filed in compliance with directions given by the Advocates Complaints Commission, to the effect that the issue of legal costs be determined first, by way of taxation proceedings; that no compelling reasons have been brought before this court to warrant the orders sought; that the issue of legal fees owing to the Applicant can only be properly ascertained and settled by way of taxation proceedings; that the present proceedings are distinct from the ELC suit and hence any determination made hereunder would in no way impact the suit and that the issue of taxation of legal costs falls within the purview of a taxing master, being the Deputy Registrar.
13. The Applicant reiterated that no agreement on legal fees was entered into between the parties herein in respect of the sale transaction, adding that no documentation has been tendered to support the Respondent's assertions on the existence of any agreement, oral or otherwise; that in any event, the purportedly agreed legal fees of Kshs. 30,000/- would constitute an undercutting on his part, in contravention of Section 36 of the Advocates Remuneration Order and that, if it is deemed that the Bill of Costs ought to have been lodged before the ELC, then the court is at liberty to make an order for transfer it to that Court.

Determination

14. I have considered the Application and the Replying Affidavit as well as submissions of the parties. The arguments by the Respondent are that the taxation proceedings fall within the purview of the ELC and not this court; that the Bill of Costs contravenes the mandatory provisions of Section 69(1), (2) and (3) of the Advocates (Remuneration) Order; that the issue of legal fees is undisputed; and that there is a pending complaint before the Advocates Complaints Commission.
15. On the other hand, the Applicant has argued that the Bill of Costs is properly before this court given that taxation proceedings are independent from the ELC suit and would in no way impact the outcome thereof; that no agreement was ever entered into between the parties on the legal fees relating to the sale



transaction; that the issue whether or not the Bill of Costs has been drawn in the prescribed manner is a preserve of the taxing officer; and that the Advocates Complaints Commission had directed that the taxation proceedings be commenced and determined before a determination could be made on the complaint.

16. On the issue pertaining to the proper forum for bringing the Bill of Costs, it is uncontroverted that the present matter relates to taxation proceedings, specifically an Advocate-Client Bill of Costs, which is governed under Schedule 6, Part B of the Advocates (Remuneration) Order. That said, the law confers jurisdiction to hear and determine taxation matters on the taxing officers; namely, the Registrars and Deputy Registrars of the High Court, as seen under Paragraph 10 of the Advocates (Remuneration) Order which expresses thus:

“The taxing officer for the taxation of bills under this Order shall be the Registrar or a district or deputy registrar of the High Court or, in the absence of a registrar, such other qualified officer as the Chief Justice may in writing appoint; except that in respect of bills under Schedule 4 to the order the taxing officer shall be the registrar of trade marks or any deputy or assistant registrar of trade marks.”

17. Further to the foregoing, Deputy Registrars have been assigned to the various Divisions of the High Court and courts of equal status, being the ELC and the Employment and Labour Relations Court (ELRC) with powers to undertake taxation proceedings. The ELC is a Court of equal status to the High Court. The jurisdiction of the ELC is clearly spelt out under Section 13 of the ELC Act. The dispute giving rise to this application is Milimani ELC Misc. No. E151 of 2025 Moses Kabicho Ndungi v Gachomo Kenneth Mwaniki T/a Ngugi Mwaniki & Co. Advocates. It was filed in the ELC and is still pending, according to the information availed to this court.

18. I have considered this matter and I make a finding that the Registrar or Deputy Registrar of the ELC is the right officer to tax Bills of Costs filed in matters that fall within the jurisdiction of the ELC. It would not be proper to overload the Registrar or Deputy Registrars with bills of costs emanating from disputes that are filed within the ELC yet there are Deputy Registrars in that court. Besides, this court has been transferring, administratively, Bills of Costs emanating from the ELC to the DRs in that Court for taxation.

19. Consequently, I agree with the Respondent, that this matter ought to have been filed in the ELC. I therefore decline to determine the issues raised in the instant application and direct that this matter be and is hereby transferred to the ELC to be placed before the Registrar of that Court for necessary directions.

20. The DR of this court is directed to urgently act and transmit this file to the ELC for action.

21. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF DECEMBER 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Wanjeri for the Client/Defendant

Mr. Gachomo for the Advocate/Plaintiff

