



**Nabulindo & Co. Advocates v Shikuku (Miscellaneous Application  
151 of 2019) [2025] KEHC 18973 (KLR) (22 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS APPLICATION 151 OF 2019  
WM MUSYOKA, J  
DECEMBER 22, 2025**

**BETWEEN**

**DK NABULINDO & CO. ADVOCATES ..... APPLICANT**

**AND**

**PATRICK WASHISWA SHIKUKU ..... RESPONDENT**

**RULING**

1. The Motion, dated 6<sup>th</sup> September 2025, seeks 3 principal orders: stay of execution of the decree herein and of the warrants of arrest in force, the setting aside of the ex parte judgement/ruling herein, and leave to defend. The case by the respondent is principally that of non-service, hence lack of awareness on the existence of these proceedings, prior to the warrant of arrest being issued.
2. The response is that there was service, but the respondent did not attend court, on the date when the Advocate/Client Bill of Costs was taxed. It is asserted that when the respondent failed to satisfy the decree, arising from the said taxation, the applicant became entitled to levy execution.
3. The application was canvassed through written submissions, filed by both sides. I have read them, and noted the arguments made.
4. The principal issue is service. The Advocate-Client Bill was taxed on 20<sup>th</sup> November 2019, in the absence of the respondent. It was said that he was served. A bunch of affidavits of service are attached to the replying affidavit of the applicant. However, none of them is useful, for they do not have the notice or process that they were allegedly serving, neither do they disclose the date when the matter, whose notice was being served, was due to come up in court. I cannot tell what exactly was being served, and when the matter was due in court, to enable me assess whether there was effective service.
5. I see an affidavit of service, dated 19<sup>th</sup> November 2019. I can only speculate that the same could have been related to the matter coming up on 20<sup>th</sup> November 2019. The said affidavit does not indicate when



- the matter was due in court. Neither is the notice, that was being served, attached to it, as evidence of what was being served.
6. As there is no satisfactory proof of service, it should follow that the proceedings of 20<sup>th</sup> November 2019, ought to be vacated.
  7. Looking at the record of 20<sup>th</sup> November 2019, it should be clear that no taxation was undertaken. No ruling was delivered, which would have demonstrated that each of the items for taxation was considered, to evaluate compliance with the applicable Advocates Remuneration Order.
  8. The Bill was allowed, merely because the respondent was not in attendance. Yet the courts have variously stated that taxing a bill as drawn, without interrogating its contents or substance, just because the respondent is not in court, is not the proper approach to taxation.
  9. These matters were discussed in *Labh Singh Harman Singh Limited vs. Attorney General of the Republic of Kenya & 2 others* [2016] eKLR (Ogola, J), *Joe N Mwanthi & Company Advocates vs. David Kihono Waweru* [2017] eKLR (Mbogholi Msagha, J) , *Vipul Premchand Haria vs. Kilonzo & Co Advocates* [2020] eKLR (Karanja, Kiage & Sichale, JJA), *Stephen N Gikera t/a Gikera and Vadgama Advocates vs. James M Gatome* [2020] eKLR (Jaden, J), *Jumuia Hotel vs. Stephen Ndanyi & Juliana Chausiku Osogo* (Suing as the legal representatives of the Estate of Catherine Atemo Ndanyi - Deceased) & another [2022] KEHC 12742 (KLR) (F. Ochieng, J) and *Njeri vs. Mathenge* (Civil Appeal 5 of 2017) [2022] KEHC 14977 (KLR) (JN Njagi, J).
  10. It was emphasised, in those decisions, that the Bill of Costs has to be assessed and its contents interrogated, even where the Bill is not opposed. Taxation is about exercise of discretion, and, certainly, there would be no exercise of discretion, where a Bill of Costs for Taxation, is allowed, on the spot, in the absence of a reasoned ruling, merely because the other side does not attend court, for the taxation, whether served or not. Taxation of a Bill of Costs, without first assessing, evaluating, considering or interrogating it, to find a basis for exercising discretion, invariably unjustly enriches the applicant or the drawer.
  11. In view of what I have stated above, I hereby allow the Motion, dated 6<sup>th</sup> September 2025, and make the following orders:
    - a. That I set aside the taxation that was purportedly carried out on 20<sup>th</sup> November 2019, and all the consequential orders that flowed from that taxation;
    - b. That the Advocate/Client Bill of Costs, dated 17<sup>th</sup> September 2019, shall be taxed afresh, and the taxing officer shall be expected to scrupulously comply with the directions given in the decisions that I have mentioned above;
    - c. That there shall be no need to stay execution, given that the taxation has been set aside; and
    - d. That the matter shall be placed before the Deputy Registrar, so that the respondent is directed, appropriately, of the sort of filings that may be required of him, in the circumstances, before the taxation.
  12. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 22<sup>ND</sup> DAY OF DECEMBER 2025.**

**WM MUSYOKA**

**JUDGE**



**Mr. Arthur Etyang, Court Assistant, Busia.**

**Mr. Patrick Washiswa Shikuku, the respondent, in person**

**Advocates**

**Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for the applicant.**

