

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC MISC. APPL. NO. 94 OF 2019

ANDREW
ADVOCATES.....ADVOCATE/APPLICANT

AND

STEVE

-VERSUS-

PARAGON
LIMITED.....CLIENT/RESPONDENT

ELECTRONICS

RULING

1. Before this court for determination is the notice of motion dated 20th February, 2025 filed by the advocate/applicant, and it is expressed to be brought under **Section 51 (2)** of the **Advocates Act**, **Sections 1A, 1B and 3A** of the **Civil Procedure Act**, and **Order 51 Rule 1** of the **Civil Procedure Rules** seeking the following orders:

1. That this honourable court be pleased to enter judgment against the client/respondent for the certified amount of Kenya Shilling Seven Hundred and Seventy Thousand, Two Hundred and Thirty-Three and Eighty Cents (Kshs.770,233.80) as per the certificate of taxation dated 25th November, 2020.

2. That this honourable court be pleased to order that the taxed costs of Kenya Shillings Seven Hundred and Seventy Thousand, Two Hundred and Thirty-Three and Eighty Centres (Kshs.770,233.80) do attract interest at court rates of 14% per annum from 29th October, 2020 being the date of taxation until payment in full.

3. That pursuant to the entry of judgment hereinabove, a decree be issued with leave to the applicant to execute.

4. That the costs of this application be provided for.

2. The application is premised on the grounds on its face. It is further supported by the affidavit of Beverly Mabango, Advocate which is sworn on even date. The learned counsel deposed that vide a ruling delivered by the taxing officer on 29th October, 2020, they were issued with a certificate of taxation dated 25th November, 2020 confirming the stated amounts. That being dissatisfied with the decision of the taxing master, the client/respondent filed the chamber summons dated 1st December, 2020 challenging the same. It was further deposed that the parties filed a consent dated 19th April, 2021 to the effect that the matter be marked as settled with no orders as to costs.
3. The learned counsel deposed that the consent having settled the client's reference, they sought for the settlement of the sums in the certificate of costs which the client/respondent responded was a nullity owing to the said consent. The learned counsel deposed that the certificate of taxation has not been set aside nor altered by this court, and the same is final as to the amounts of costs and due to the advocate/applicant.

4. The application was opposed vide the replying affidavit of Valentine Ataka, the learned counsel for the client/respondent sworn on 28th April, 2025. The learned counsel deposed that the consent agreement dated 19th April, 2021 and adopted in court on 17th May, 2025 settled the matter, and for this reason the advocate/applicant has not approached this court with clean hands. Further, that there are two other matters being ELC Misc. Appl. No. 95 and 96 of 2019 where similar consents were recorded marking these matters as closed.
5. The learned counsel further deposed that through an application dated 19th October, 2021, the advocate/applicant moved the court seeking to expunge the consent dated 19th April, 2021, and that the orders do apply to the two other related matters being Misc Appl. Nos. 95 and 96 of 2019. That in a ruling delivered on 9th February, 2022, the court pronounced itself on the issue of the consent, and as a result, this court is *functus officio*. Further, it was deposed that the consent was not in relation to the reference as alleged and if at all it was the case, the reference arose from the costs taxed in this matter which was marked as fully settled with no orders as to costs.
6. The learned counsel further deposed that the parties engaged in negotiations that marked the matter as fully settled and the

advocate/applicant is aware of these terms. Further, that it has been four years since the parties entered into the consent, and that the advocate/applicant cannot now come and start rephrasing the terms of the consent as the same was with respect to the reference. In conclusion, the learned counsel for the client/respondent deposed that litigation must come to an end, and this matter having been closed, the said consent has not been set aside.

7. Mutiso Steve Kimathi, the managing partner of the advocate/applicant filed a supplementary affidavit sworn on 26th August, 2025. The learned counsel reiterated the contents of their supporting affidavit, and deposed that the client/respondent's attempt to equate a consent settling the pending reference with a waiver is misconceived, as the consent did not specifically address the taxed costs nor did it purport to vary or set aside the certificate of taxation. Further, it was deposed that the client/respondent is attempting to extend the scope of the consent retrospectively as it was entered during the pendency of the reference and the taxed costs had been determined before the consent.
8. The learned counsel deposed that this court is not *functus officio* in relation to the recovery of the taxed costs which remain unsettled to date.

9. The application was canvassed through written submissions. The advocate/applicant filed their written submissions dated 27th August, 2025. The client/respondent filed its written submissions dated 8th October, 2025. I have considered the application, the replies thereof, and the written submissions filed by the parties as well as the authorities cited. The issue for determination is *whether this court should enter judgment with regard to the certificate of taxation dated 25th November, 2020.*

10. At the centre of the dispute between the parties is the consent dated 19th April, 2021 which was adopted as an order of the court which the advocate/applicant argues, that it did not waive the settlement of the certificate of taxation. From the evidence on record, the consent culminated from an undated deed of settlement which appears to have been executed in 2021. I find it necessary to reproduce relevant parts of the deed: Part B of the deed settlement acknowledges:-

“That PEL and A&S are currently involved in active litigation against each other in various matter listed in Schedule 2 hereof.”

11. Part D reads:-

“that the parties hereto having evaluated the active litigation cases and in the spirit of reaching an amicable settlement have

agreed to cease the active litigation against each other in the terms listed herein under.”

12. Clause 3 (i) provides:-

“Signing, recording and adopting a consent in court marking the matters in Schedule 2 as fully settled between the parties thereto with no orders as to costs.”

13. Schedule 2 of the deed settlement listed this matter as well as ELC Misc Appl. Nos. 95 and 96 of 2019 as some of the matters which were marked as settled. It should be noted that this deed was executed after the certificate of costs was issued.

14. My attention has largely been drawn to the ruling delivered by my colleague on 9th February, 2022 which I have read and I note that the court pronounced itself on the issue of the consent. Bearing in mind the terms of the deed of settlement which sought to cease any litigation with respect to the matters contained in Schedule 2, and being mindful of the fact that there is a pending matter before the magistrates court concerning the deed of settlement, I am of the view that the consent spoke to the intent of the said deed.

- 15.** In my view, granting the prayers sought in the instant application would be invalidating the consent and the deed of settlement which is the subject of litigation before the magistrates' court.
- 16.** From the above, this court declines to enter judgment in favour of the advocate/applicant. The notice of motion dated 20th February, 2025 is hereby dismissed. Each party to bear its own costs. These orders to apply to ELC Misc. Appl No. 95 of 2019 and ELC Misc. Appl. No. 96 of 2019.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 20TH DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
20/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

Ms. Ochieng holding brief for Mr. Ataka for the Client/Respondent

Ms. Kabura holding brief for Mr. Kimathi for the Advocate/Applicant