



Kirui t/a Cheruiyot Kirui & Company Advocates v Limo & another (Environment and Land Miscellaneous Application E034 of 2025) [2026] KEELC 340 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEELC 340 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E034 OF 2025
GMA ONGONDO, J
JANUARY 27, 2026
IN THE MATTER OF ADVOCATES ACT CAP 16 LAWS IF
KENYA
AND
IN THE MATTER OF TAXATION OF COSTS BETWEEN
ADVOCATES AND CLIENT

BETWEEN

NATHAN C KIRUI T/A CHERUIYOT KIRUI & COMPANY
ADVOCATES APPLICANT

AND

BETHWEL KIBICHII LIMO 1ST RESPONDENT

JANE JEPKEMBOI 2ND RESPONDENT

***(KAPSABET ELC NO. E004 OF 2023 JANE JEPKEMBOI & BETHWEL
KIBICHII LIMO -VERSUS- JULIUS KIPKEMBOI (Suing as the
administrator of the estate of KIBET ARAP NGISIREI – DECEASED)***

RULING

1. In the application by way of a Notice of Motion dated 31st October 2025, the applicant, Nathan C. Kirui T/A Cheruitot Kirui and Company Advocates, is seeking the orders infra;
 - a. That the firm of Cheruiyot Kirui & Company Advocates be allowed to tax their client bill of costs in Kapsabet ELC NO. E004 OF 2023 Jane Jepkemboi & Bethwell kibichii limo -versus- Julius Kipkemboi (Suing as the administrator of the Estate of Kibet Arap Ngisirei – Deceased) as per the annexed Bill.



- b. That costs of this application be paid by the Respondent.
2. The basis of the application is the supporting affidavit of seven paragraphs sworn on even date by Nathan Cheruiyot Kirui Advocate of the applicant's firm and a copy of the bill of costs (NCE 1) annexed thereto alongside the grounds, inter alia;
 - a. The Respondent have failed, refused and ignored to pay legal costs and disbursements to the Applicant despite of numerous requests now occasioning these proceedings.
 - b. That the proceedings in this matter were successfully concluded in favour of the Respondents and the Applicants have gone ahead to execute the decree in their favour but the Respondents have refused to pay the Applicants their rightful legal fees for the services for the work done necessitating this application.
3. The Respondents opposed the application by their replying affidavit of 13 paragraphs sworn on 3rd November 2025 as well as another replying affidavit of 17 paragraphs sworn on 1st December 2025 by the 2nd Respondent for and on behalf of the 1st Respondent and himself.
4. In a nutshell, the Respondents averred, inter alia, that the applicant and the respondents made the agreement for instructions (BKL 1) and that they paid Kshs 59,000/- legal fees as per the letter (BKL 2) as well as continuous to pay the same as noted in the receipt (BKL 3) annexed to the replying affidavit. That there is a pending appeal No. Eldoret ELCA No. E062 of 2025 same as the instant the matter. That the applicant claims a large sum whereas there is BKL 1 on the legal fees hence, the application be dismissed with costs.
5. By the supplementary dated 12th November 2025, the Applicant termed the Respondents' assertion misleading and strange. That the respondents did not pay Kshs 59,000/- legal fees as contended by them.
6. The Applicant's submissions dated 14th November 2025 made reference to the application, both replying affidavits, the supplementary affidavit and three issues for determination including whether the instant application can be allowed. In discussing the issues in the positive, the applicant stated that in the absence of any execution, the document alleged to be legal fees' agreement does not meet the requisite qualification. Counsel implored the Court to find the application meritorious and allow the same. To buttress the submissions, counsel cited the case of *Rachier & Amollo LLP vs Kenya Bureau of Standards [2023] KEHC 2067 (KLR)*, sections 45, 46 and 47 (1) of the *Advocates Act*.
7. In their submissions dated 1st December 2025, the Respondents referred to the application, the replying affidavits, the supplementary affidavit and identified three issues inclusive of whether the application should be allowed. They analyzed the issues in the negative and costs have been taxed in the matter. That there was a retainer between the parties, it would be prejudicial for the applicants to take double pay in the matter and urged the court to dismiss the application with costs.
8. So, is the application meritorious?
9. It is not in dispute that the applicant rendered legal services to completion in Kapsabet ELCC No. E004 of 2023. The respondents denied the applicant's claim and averred at paragraph 6 in both replying affidavits that they required time to pay the legal fees.
10. The applicant was emphatic that the work was done to completion but that the respondents refused to pay legal fees thereof. That thus, the orders per NCK 1 in the instant application, are necessary.



11. The respondents asserted that the retainer agreement existed between them and the applicant as per BKL 1. This court subscribes to the Court of Appeal decision in the case of Omulele & Tollo Advocates vs Mount Kenya Holdings Ltd (2016) eKLR on retainer agreement and proof thereof.
12. In the case of Gichuki Kingara & Co. Advocates vs Mugoya Construction & Engineers Lt (2010) eKLR, the court opined thus;

.....since the retainer lasts until the work is done, then the respondent should patiently do the work to its completion and then tax the bill of costs..’
13. Once such work is completed, what is the rationale for taxation of the costs? In the case of Commercial Bank of Africa vs Lalji Karasn Rubadi & 2 others (2012) eKLR, Odunga J (Now, JA) held;

The rationale for taxing the costs at the end of the trial is to avoid multiplicity of proceedings in form of taxation which may lend themselves to references.....’
14. The Respondents claimed that the present matter is the same as Eldoret ELCA No. E062 of 2025. However, they did not avail or annex to their replying affidavit, the document (BKL 2) referred to therein to prove their allegations as provided in sections 107 to 112 of the *Civil Procedure Act* Chapter 21 Laws of Kenya. Moreover, the alleged retainer (BKL 1) duly signed by the Respondents was not signed by the applicant hence, not a bar to the applicant from seeking the principal order in the application.
15. It is thus, my considered view that since there was completion of work for the respondents, the applicant is entitled to pursue the taxation of costs as sought in the application.
16. Accordingly, the application is merited and the same is hereby allowed in terms of the principal order as stated in paragraph 1 (a) hereinabove with costs in the cause.
17. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 27TH DAY OF JANUARY 2026

HON G M A ONGONDO

JUDGE

In the presence of; -

1. Ms Lagat learned counsel for the Applicant
2. Respondents present in person
3. Walter, Court Assistant

