

RULING
HCCCMISC E011 OF 2023



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)

HCCCMISC E011 OF 2023

BETWEEN

GICHANA MOCHIEMO
t/a MOCHIEMO GICHANA & CO.
ADVOCATES..ADVOCATE/RESPONDENT
AND
NOA INVESTMENT LIMITED.....
CLIENT/APPLICANT
AND
MOCO AUCTIONEERS.....
AUCTIONEER/RESPONDENT

RULING

1. This ruling concerns the Notice of Motion dated 13th November 2025, brought under Order 22 Rules 51 and 52, Order 45 Rule 1, Order 9 Rule 9 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 (as amended), Sections 63(e) and 80 of the Civil Procedure Act, and Articles 25, 50 and 159(2)(d) of the Constitution.
2. The Applicants seek, inter alia, stay of execution, review and setting aside of the ruling delivered on 30th May 2024, together with all consequential orders arising therefrom, including the certificate of costs issued on 04th July 2024, the warrants of attachment issued on 06th November 2025, and the

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proclamation dated 10th November 2025. They further seek that the advocate-client bill of costs arising from Nyamira HCCC 3 of 2019 be served afresh and taxed de novo.

3. The application is supported by the Supporting Affidavit sworn on 13th November 2025 by Richard Mwebi Kwanga, who describes himself as the Managing Director of the 1st Applicant, NOA Investment Limited, and who is also the 2nd Applicant herein. He depones to matters relating to the advocate-client relationship, the taxation proceedings, the alleged absence of service, and the ensuing execution.
4. The application is further supported by the affidavit sworn on 13th November 2025 by Rose Mokeira Oguku, who describes herself as a director of the 1st Applicant, and the affidavit sworn on 13th November 2025 by Sheila Moraa, who describes herself as an employee of the 1st Applicant. Both depone to matters within their personal knowledge. The Applicants also rely on the Supplementary Affidavit sworn on 13th January 2026 by Richard Mwebi Kwanga, filed with leave of the Court.
5. The Advocate/Respondent opposed the application through the Replying Affidavit sworn by Kevin Gichana Mochiemo on 12th December 2025.

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6. Upon initial consideration of the application, the Court granted conditional stay of execution. In compliance with those interim orders, the Applicants deposited the sum of KES 500,000 in Court on 17th November 2025.
7. Having considered the pleadings, affidavits, annexures and submissions on record, the Court is satisfied that although several issues were raised, the principal and dispositive issue for determination is whether the Applicants were served with the advocate-client bill of costs and the notice of taxation. If that issue is resolved in the Applicants' favour, the foundation of the impugned ruling collapses and the application must necessarily succeed.

1) Whether the Applicants were served with the advocate-client bill of costs and notice of taxation

8. The Applicants' case is that the advocate-client bill of costs and the taxation proceedings culminating in the ruling delivered on 30th May 2024 were conducted without service upon the Client/Applicant, thereby denying it the opportunity to participate in the taxation proceedings or to place before the taxing officer evidence of payments allegedly made to the Advocate/Respondent.

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9. In his Supporting Affidavit sworn on 13th November 2025, the 2nd Applicant depones that neither the miscellaneous application nor the advocate-client bill of costs was ever served upon the Company or its authorised officers, and that the existence of the ruling and certificate of costs only came to his attention upon service of a proclamation notice by the Auctioneer on 10th November 2025.
10. This position is reiterated in the Supplementary Affidavit sworn on 13th January 2026, in which the 2nd Applicant maintains that no notice of taxation, ruling or certificate of costs was ever served upon the Applicants.
11. The affidavits of Rose Mokeira Oguku and Sheila Moraa, both sworn on 13th November 2025, corroborate the Applicants' position, each deponent stating that the Company was never served with any court process relating to the taxation proceedings.
12. The Advocate/Respondent, in the Replying Affidavit sworn on 12th December 2025, asserts that the bill of costs was duly filed, served and prosecuted in accordance with the law. However, no affidavit of service, notice of taxation, or acknowledgment of receipt is annexed to the

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replying affidavit. The assertion of service is therefore unsupported by sworn or documentary proof.

13. The Court has examined the record and in the absence of sworn proof of service, and in light of the consistent, detailed and corroborated denial of service by the Applicants, the Court is satisfied that the advocate-client bill of costs and the taxation proceedings were conducted without service upon the Applicants.

14. The law is settled that where a party is condemned unheard due to want of service, the resultant decision is irregular and cannot stand. The right to be heard is a non-derogable constitutional guarantee under Articles 25 and 50 of the Constitution.

15. In **Otiende & 5 others v Dache & 4 others [2025] KECA 2275 (KLR)**, the Court of Appeal reaffirmed that any decision reached in violation of the right to be heard is constitutionally infirm. In so holding, the Court affirmed earlier binding authority, including **Kidero & 4 Others v Waititu & 4 Others [2014] KESC 11 (KLR)**, **Patel & Another v Kimundia & 4 Others (2023)**, and **A/Maki & Others v Macharia & Another (2005) 2 EA 206**.

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16. Applying that settled jurisprudence to the present matter, the Court finds and holds that the ruling delivered on 30th May 2024 was rendered in violation of the Applicants' right to be heard.

17. The ruling was therefore irregular and nullity *ab initio*. The principal issue is accordingly determined in favour of the Applicants, and it follows that the application must succeed.

20. Having found that the ruling delivered on 30th May 2024 was a nullity for want of service, the consequential effect is that the certificate of costs issued on 04th July 2024 and all execution proceedings founded thereon founded thereon collapse *ex debito justitiae* and must be set aside as a matter of right.

21. The requirement for the provision of security arose solely from interim orders issued in aid of an irregular ruling. There is therefore no lawful basis for the continued retention of the deposit made by the Applicants.

Final orders

22. In the result, the Court makes the following orders.

1) The ruling delivered on 30th May 2024 is hereby set aside in its entirety.

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- 2) The certificate of costs issued on 04th July 2024, the warrants of attachment issued on 06th November 2025, and the proclamation dated 10th November 2025 are hereby set aside.
- 3) All execution proceedings arising from the impugned ruling are hereby vacated.
- 4) The sum of KES 500,000 deposited in Court on 17th November 2025 pursuant to interim orders is hereby released forthwith to the Applicants, there being no legal basis for its continued retention.
- 5) The advocate-client bill of costs shall be served afresh upon the Client/Applicant and shall be taxed *de novo* in accordance with the law before a different taxing officer.
- 6) Costs of the application shall be borne by the Respondent

DELIVERED AT NYAMIRA THIS 22nd DAY OF
January 2026



WAMAE.T. W. CHERERE
JUDGE

Appearances

Court Assistant - Hilda

For Applicant - Mr. Kirianki for Kirianki & Co. Advocates

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**For Respondent - Mr. Momanyi for Mochiemo Gichana & Co.
Advocates**