

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**[MILIMANI LAW COURTS]**  
**THE CIVIL APPELLATE DIVISION**  
**(Coram: A.C. Mrima, J.)**  
**CIVIL APPEAL NO. E548 OF 2025**

**-between-**

**ASW ADVOCATES LLP .....**  
**APPELLANT**

**-Versus-**

**STEPHEN GACHIE MWANZA**  
**P/A MWANZA & CO. ADVOCATES.....**  
**.....RESPONDENT**

*(Being an appeal from the Ruling of Hon. William Lopokoiyit (Senior Resident Magistrate) delivered on 24<sup>th</sup> April 2025 in Nairobi MCOMMSU No. E968 of 2024)*

**JUDGMENT**

1. The appeal subject of this judgment arose from a ruling that allowed a jurisdictional objection. Through a Plaint dated 15<sup>th</sup> October 2024, the Appellant herein, *ASW Advocates LLP*, sought judgment against the Respondent in *Nairobi [Milimani] Chief Magistrates Civil Suit number E968 of 2024* [hereinafter referred to as **'the suit'**] in the sum of Kshs. 35,000/= being a refund of overpaid costs, Kshs. 250/= being the costs of running a search on the business registration service platform, costs of the suit and interest at the rate of 14% from the date of filing the suit.
  
2. The background that gave rise to the suit was that by a Ruling dated 15<sup>th</sup> August 2024, the Environment and Land Court sitting at Thika awarded the Respondent costs and thereafter the costs were assessed in the sum of Kshs. 815,110/=. When settling sum, the Appellant inadvertently paid the Respondent *via* a cheque in the sum of Kshs. 850,110/=:, thereby making an overpayment of Kshs. 35,000/=. Noticing the error, the Appellant sought for a

refund of the overpayment which the Respondent declined and thereby necessitating the filing of the suit.

3. By a Preliminary Objection dated 29<sup>th</sup> October 2024, the Respondent faulted the trial Court for lacking jurisdiction to hear and determine the matter on the basis that the matter was in relation to a dispute of accounts between Advocates arising out of the settlement of a Bill of Costs in ELC Case Number 234 of 2017 which was a preserve of the High Court of Kenya under the *Advocates Act (Cap. 16)* of the Laws of Kenya. In a ruling dated 24<sup>th</sup> April 2025, the trial Court upheld the objection and dismissed the Appellant's claim with costs to the Respondent.
4. Aggrieved by the ruling, the Appellant filed the instant appeal on 11 repetitive grounds whose purport was to challenge the entire ruling. The Appellant sought that the appeal be allowed, the impugned ruling be set aside, the objection be dismissed and that default judgement be entered on the claim. The Appellant also prayed for costs of both the appeal and the suit.
5. Directions were given on filing of written submissions, but none of the parties complied. Nevertheless, this Court will render itself on the appeal. Having carefully perused the record, the only issue that stands out for this Court's determination is whether the appeal is with merit.
6. The trial Court upheld the Respondent's objection on the basis that it lacked jurisdiction to hear and determine the matter for reasons that the issue in dispute was a preserve of the High Court. A look at the Plaint dated 15<sup>th</sup> October 2024 filed in the suit leaves no doubt that the Appellant only sought for a refund of the overpaid costs. The costs were quantified and the Appellant did not challenge the assessment or taxation, as it were. The Appellant only sought for what it had paid in excess of the order of the Court. To this Court, and with utmost respect, the Court erred in finding that it lacked jurisdiction to hear and determine the suit when it was in fact limited to a refund and not a scrutiny of the costs which had already been determined.

7. The upshot, therefore, is that the appeal is merited and is accordingly allowed in the following terms: -

**[a] The appeal is hereby allowed and the Ruling dated 24<sup>th</sup> April 2025 in *Nairobi [Milimani] MCOMMSU E968 of 2024* upholding the Preliminary Objection dated 29<sup>th</sup> October 2024 and dismissing the Appellant's suit be and is hereby quashed and set aside. The Preliminary Objection dated 29<sup>th</sup> October 2024 is hereby dismissed with costs in the suit.**

**[b] The suit, *Nairobi [Milimani] MCOMMSU E968 of 2024*, be and is hereby reinstated and remitted to the Chief Magistrates Court for further dealing.**

**[c] The sum of Kshs. 25,500/= deposited as security in this Court shall be returned to the depositor.**

**[d] Costs of the appeal assessed at Kshs. 10,000/= [Ten Thousand Only] is hereby awarded to the Appellant to be paid by the Respondent within 21 days from the date hereof, in default, execution to issue.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at NAIROBI this 10<sup>th</sup> day of February, 2026.**

**A. C. MRIMA  
JUDGE**

**Judgment virtually delivered in the presence of:**

**Mr. Riungu, Learned Counsel for the Appellant.**

**Mr. Mburu**, Learned Counsel for the Respondent.

**Michael/Amina** - Court Assistants.