

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL MISC. APPLN NO. E099 OF 2025

OWITI, OTIENO & RAGOT ADVOCATES APPLICANT
- VERSUS -
THE EXECUTOR,
ESTATE OF SUKHDEV SINGH MANGAT RESPONDENT

R U L I N G

1. By a Motion on Notice dated **1/09/2025**, the applicant applied for Judgment for **Kshs. 583,360/-** together with interest thereon at 14% from **27/04/2025** against the respondent. The Motion was brought under the provisions of ***Order 51 Rule 1 of the Civil Procedure Rules*** and ***section 51(2) of the Advocates Act, Cap 16 Laws of Kenya*** and ***Section 3A of the Civil Procedure Act***.
2. The basis for seeking judgment was that it was in terms of a Certificate of Costs dated **16/07/2025**.
3. In the Supporting affidavit sworn by **David Otieno** on **1/09/2025**, it was contended that he represented the respondent in **Law Society of Kenya Disciplinary Cause No. 158 of 2019** but the respondent failed to pay his legal fees. That he proceeded to raise his Bill of Costs and the same was taxed at **Kshs. 583,360/-** on the **16/07/2025**.

4. That the respondent has not settled the said Bill to date neither did he oppose the taxation nor file a reference to challenge the taxation. The Motion was not opposed and the ruling was set for **9/10/2025**. This court directed that the ruling would apply to other similar matters between the parties herein, being **Kisumu Civil Miscellaneous Nos. E095, 96, 97 & 98 of 2025**.
5. Prior to the ruling being delivered, the respondent filed a Motion dated **7/10/2025** seeking to arrest and stay the delivery of the Ruling scheduled for the **9/10/2025**, pending the hearing and determination of the references filed before the High Court at Kisumu being **HCCCMISC E149, E150, E151 and E152 of 2025**. The said references were said to be pending before my brother Omido J.
6. The Motion was said to be brought under **sections 1A, 1B, 3A of the Civil Procedure Act & Rule 11 of the Advocates (Remuneration) Order**. It was anchored on therein as well as the supporting affidavit of **Ekuru Aukot**.
7. It was deposed that the respondent had already filed a Reference on the **29/10/2025** before the High Court at Kisumu challenging the ruling of the taxation of the Advocate-Client Bill of Costs delivered on the **16/07/2025**.

8. That the said references were pending determination before **Omido J** and their determination would have a direct bearing on the ruling sought to be arrested.
9. That proceeding with the Ruling on adopting the issued Certificate of Costs as the judgment and Decree of the Court before the References are heard and determined would be premature and would defeat the purpose of the pending references.
10. That the principles of natural justice, fairness and equity demand that the ruling be stayed until the References are disposed off failure to which the respondent would be greatly prejudiced and may be subjected to payment of inflated or disputed legal fees.
11. I have considered the record. The respondent is in essence calling upon the court to exercise its discretion and grant him the orders sought.
12. Judicial discretion is a delicate balancing act, a solemn trust reposed in the courts to ensure justice is not only done but manifestly seen to be done. This discretion is not absolute, nor is it an open cheque to be wielded arbitrarily.
13. In **Hajar Services Limited v Peter Nyangi Mwita [2020] eKLR**, the Court reiterated that discretion must be exercised judicially, not whimsically. The court stated;

“This being an exercise of judicial discretion, like any other judicial discretion must be exercised on fixed principles and not on private

opinions, sentiments and sympathy or benevolence but deservedly and not arbitrarily, whimsically or capriciously. The Court's discretion being judicial must therefore be exercised on the basis of evidence and sound legal principles, with the burden of disclosing the material falling squarely on the supplicant for such orders. One of those judicial principles expressly provided for in the above provision is that the applicant must satisfy the Court that he has a good cause for doing so, since as was held in Feroz Begum Qureshi and Another vs. Maganbhai Patel and Others [1964] EA 633, there is no difference between the words "sufficient cause" and "good cause". It was therefore held in Daphne Parry vs. Murray Alexander Carson [1963] EA 546 that though the provision for extension of time requiring "sufficient reason" should receive a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of bona fides, is imputed to the appellant, its interpretation must be in accordance with judicial principles."

14. Taking into consideration the facts presented in this case, I am of the opinion that this is a proper case in which this Court ought to exercise its discretion and grant the orders sought. This is so because, the References made against the taxations have a direct consequence on the Certificates of Costs issued in respect thereof. If by any chance they are successful, if

this Court would have delivered its ruling, there would be an embarrassing situation whereby the decree arising therefrom would be in naught. It is imperative therefore to arrest the situation before it escalates.

15. Accordingly, I hereby arrest the ruling set for **9/10/2025** and hold that there be a stay of all consequential proceedings and/or execution arising from the intended ruling pending the hearing and determination of the references filed before the High Court at Kisumu being **HCCCMISC E149, E150, E151 and E152 all of 2025.**
16. This ruling applies to **Kisumu Civil Miscellaneous Application Nos. 95, 96, 97 & 98 of 2025.**
17. In the circumstances of this case, each party to bear own costs.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **19th** day of **February, 2026.**

A. MABEYA, FCI Arb
JUDGE