



**Onsongo c/o Onsongo & Co. Advocates v Ochong'a (Civil Miscellaneous Application E129 of 2024) [2026] KEHC 1145 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1145 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL MISCELLANEOUS APPLICATION E129 OF 2024**

**A MABEYA, J  
FEBRUARY 5, 2026**

**BETWEEN**

**RICHARD B.O. ONSONGO C/O ONSONGO & CO. ADVOCATES . ADVOCATE**

**AND**

**DAVID ONSOMU OCHONG'A ..... CLIENT**

**RULING**

1. On 24/10/2025, this court entered judgment for the respondent in the sum of Kshs. 700,000/- together with interest at 14% from 8/7/2024 until payment in full being accrued advocates fees that had become due from the applicant.
2. By a Motion dated 30/10/2025, the applicant sought stay of execution of that ruling and its review and setting aside. The said Motion was brought under sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 22 rule 22 and 25 and Order 51 of the Civil Procedure Rules.
3. The grounds for the Motion were set out in the body thereof and the affidavit of David Onsomu Onchong'a sworn on 30/10/2025. These were that; the respondent was in the process of executing the said ruling and thus there was need to stay the execution pending determination of the application. That he did not participate in the proceedings leading up to the ruling of 24/10/2025 as he was not served with the pleadings in the matter. That he had already settled part of the decretal sum to the tune of Kshs. 251,500/- and he was willing to settle the decretal sum.
4. The Motion was opposed vide a Replying Affidavit of Richard B.O. Onsongo sworn on 1/11/2025. He averred that prior to filing the Advocate-Client Bill of Costs he had discussions with the applicant with a view of agreeing on the fees payable which discussions failed to bear fruit.
5. That following the taxation of the Bill of Costs, he further engaged the applicant severally but the applicant did not respond and instead filed the instant application. That he took into account the



- payments made by the applicant prior to instituting the taxation proceedings and thus the amount taxed was the amount due and owing.
6. That contrary to the applicant's allegations that he did not participate in the instant proceedings, the record showed that the applicant personally attended before the Deputy Registrar on the 8/7/2024 when a consent was entered on the amount taxable of Kshs. 700,000/-. That since then, the applicant has made a payment of Kshs. 60,000/-.
  7. That subsequently, the court file went missing and was only reconstructed on 3/7/2019. That subsequent reminders for proceedings were made but no response had been received from the Court. He was unsure if the proceedings were ready. He was to seek directions from the trial Judge on their availability. That the non-availability of the court file should not be a ground for review of the order of 10/9/2024. That the plaintiff sought to benefit from the irregular order that had been corrected by the Court vide its order of 10/9/2024. He sought that the Motion be dismissed.
  8. The application was disposed of by way of submissions. However, as at the time of writing this judgment, only the applicant's submissions were on record. It was submitted for the applicant that the Motion had been made without unreasonable delay having been filed on the 30/10/2025 when the ruling was made on the 24/10/2025.
  9. That the impugned Ruling was delivered without all the information being available to the Court as the applicant was unable to participate in the suit and further that payments had already been made prior to the ruling on Certificate of Costs dated 8/7/2024.
  10. That the taxation and enforcement of advocate's fees must be guided by the principle that no party should be unjustly enriched and also that interest is compensatory not punitive and cannot lawfully accrue on monies already paid, as doing so results in an unwarranted financial advantage to the receiving party.
  11. This is an application for review of the order of this Court of 24/10/2025. The power to review is given under section 80 of the *Civil Procedure Act* and the grounds set out in Order 45 of the Civil Procedure Rules. The grounds are well known; discovery of new evidence, error apparent on the face of the record and for any sufficient reason.
  12. The applicant's application for review was grounded on two grounds; Firstly, that he was not properly served with the pleadings in this matter and thus did not participate and secondly, that the amount taxed at Kshs. 700,000/- was arrived at without payments he had already made being taken into account.
  13. I have considered the record, the applicant has not demonstrated that there had been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the ruling was rendered. He has not demonstrated that there had been some mistake or error apparent on the face of the record or that the review sought was for any other sufficient reason.
  14. From the record, the amount of Kshs. 700,000/- which the applicant disputes was taxed by the taxing officer. Being aggrieved by how that amount was arrived at, the applicant ought to have filed a reference on the same elucidating that he had not been served with the pleadings therein and further that he had made a partial payment of the same. These were suitable grounds for seeking a reference and not for review as framed in the Motion before Court.
  15. The applicant impugns this court's ruling of 24/10/2025 on the assumption that it decided the amount of Kshs. 700,000/- and interest to be paid out to the respondent. To the contrary, this Court



was merely acting in execution proceedings. The applicant ought to have filed a reference against the decision of the taxing master to challenge the award of Kshs. 700,000/-.

16. In the premises, the Court finds no merit in the application dated 30/10/2025 and dismisses the same with costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**A. MABEYA, FCI Arb**

**JUDGE**

