

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL SUIT NO. E061 OF 2023

1. F.KINYUA KAMUNDI
2. D.T. MUYAA (trading as Kinyua Muyaa
& Company Advocates).....PLAINTIFFS/RESPONDENTS
-VERSUS-
PMM ESTATES(2001) LIMITED.....DEFENDANT/CLIENT

RULING

1. The applicants' application is a motion dated 9 July 2025 in which they primarily seek the following orders:

“b.The Defendant's Motor Vessel "Mirembe Judith" currently docked at Berth No. 18, in the Kilindini Port of Mombasa, be attached and detained before Judgement and the Defendant, its servants, agents or employees including the Master, Officers and Crew on board the Motor Vessel "Mirembe Judith" be restrained from sailing and/or moving the Vessel from the Port of Mombasa pending the hearing and determination of this application or pending the Defendant's deposit of security in the sum of Kshs. 12,000,000.00 for the Defendant's performance of such decree as emanates herein, from the Certificate of Costs dated 16.6.2025 in High Court Misc. Civil Application No. E320 of 2023, plus costs and interest.

c. Judgement be entered for the Plaintiff as against the Defendant herein in the sum of Kshs. 11,000,000.00 in terms of

the Certificate of Costs dated 16.6.2025 emanating from the taxation by consent of an Advocate Client Bill of Costs dated 16.11.2023 in High Court Misc. Civil Application No. E320 of 2023 plus costs and interest.”

2. The application is expressed to be brought under Sections 1A, 1B & 63 and Orders 36 Rule 1(b), 39 Rule 1 and 40 Rule 3(4) of the Civil Procedure Act, cap. 21 and Rules and Section 48 and 52 of the Advocates Act, cap. 16. The affidavit in support of the application has been sworn by Ms. D.Muyaa, an advocate of this Honourable Court practising in that capacity in the applicant firm.
3. The learned counsel has sworn that the applicants’ advocate/client bill of costs dated 16 November 2023 was taxed by consent on 16 June 2025 in the sum of Kshs. 11,000,000.00 in High Court Miscellaneous Civil Application No. E320 of 2023. Despite demand for payment, the defendant has not settled the same.
4. It is for this reason that the applicants seek judgment in the sum of Kshs. 11,000,000/= , more particularly in terms of the certificate of costs (should be certificate of taxation) dated 16 June 2025.
5. The applicants have sworn further that the only known asset of the defendant within this Honourable Court's jurisdiction is the Motor Vessel "Mirembe Judith" which, at the time of filing this application, was

docked at Berth No. 18 in the Kilindini Port of Mombasa for discharge of a consignment, after which it was set to sail out of the port of Mombasa.

6. According to the applicants, if the vessel is not detained or restrained from sailing from the port, their claim against the defendant would be defeated. It would also be expensive to pursue the defendant, which is a foreign Tanzanian Company.
7. In response to the application, Dr. Wilson Mukama swore a replying affidavit in which he introduced himself as the director of the respondent. According to Dr. Mukama, the applicants represented the defendant in this Honourable Court Case No. M001 of 2022 and in the Court of Appeal Case No. 124 of 2022.
8. As far as the applicants' fees is concerned, Dr. Mukama has confirmed that the respondent was aware of the applicants' bill of costs dated 16 November 2023. He has also admitted that on 16 June 2025, a consent on the bill of costs was reached; it was agreed that the bill would be taxed at Kshs. 11,000,000/=. Although the consent is yet to be adopted as the order of this Honourable Court, the respondent was willing to settle the applicant's agreed fees by instalments of Kshs. 1,000,000/= per month till payment in full.
9. Nonetheless, it is the respondent's position that since the consent has not been adopted, the applicant's application is premature. The application is said to have been filed in a suit which was withdrawn and, thus, the

consent cannot be possibly adopted in this matter. I have not been able to find any evidence of withdrawal of the suit on the court record.

10. The defendant's motor vessel is said to be in shipping business; detaining and docking it at the port would hurt the defendant's business. It is admitted that the defendant is a foreign company based in Tanzania but it has business interests in the port of Mombasa and, therefore, there is no danger of the defendant absconding from the jurisdiction of this Honourable Court.

11. There is a substantive suit in the background of the applicant's application. The suit is by way of a plaint dated 31 July 2023. In that suit, the applicants sued the respondent for:

“ a) A declaration that the Plaintiffs are entitled to a charge and to hold the motor vessel Mirembe Judith preserved through the Plaintiffs' efforts as security for the payment of the Plaintiffs' fees.

b) An order under Section 52 of the Advocates Act to preserve the Motor Vessel Mirembe Judith at Mombasa and to restrain the Defendant from removing the Vessel from Mombasa prior to depositing security in the sum of USO 95,000.00 for the Plaintiffs' fees, interest and the costs of this suit.

c) An order of injunction restraining the Defendant from selling or transferring the ownership of the Motor Vessel Mirembe

Judith and from creating any mortgage, charge or other encumbrance against that vessel until security for this claim is provided or until the fees are paid whichever happens first.

d) Attachment of the Motor Vessel Mirembe Judith pending the Taxation of the Advocate/Client Bill of Costs dated 18.7.2023 and the payment of the balance of those fees.

e) Costs of this suit.”

12. According to the applicant’s submissions, the suit was filed pursuant to section 48 of the Advocates Act. This is clear from the following excerpts in the applicants’ written submissions:

“1. This is a suit by a law firm against a former client for fees. We act in person.

13.(vi) vi. This suit is properly filed under the Provisions of Section 48 of the Advocates Act, for the recovery of costs and the Defendant's Vessel the subject of the matter for which fees were taxed, is sought to be arrested and detained as security for such costs;”

13. Section 48 of the Advocates Act which the applicants have invoked reads as follows:

48. Action for recovery of costs

(1) Subject to this Act, no suit shall be brought for the recovery of any costs due to an advocate or his firm until the expiry of one

month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in his firm, has been delivered or sent by registered post to the client, unless there is reasonable cause to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before expiry of the period of one month.

(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.

(3) Notwithstanding any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for recovery of costs has been filed.

14. The suit contemplated here is strictly for recovery of costs due to an advocate from his erstwhile client. Section 48(3) reinforces this point; that a bill of costs between an advocate and his client may be taxed even if a suit for recovery of costs has not been filed. Thus, the costs for which an advocate may sue under section 48(1) are the same costs that would be taxed in section 48(3).

15. Further, according to section 49(a) of the Advocates Act, where the suit for the advocate's costs is contested, no judgment can be entered until the

bill of costs has been taxed and a certificate to that end issued unless, of course, the advocate and the client enter a consent on the costs payable.

The section reads as follows:

49. Procedure in action where quantum of costs is challenged by defence

Where, in the absence of an agreement for remuneration made by virtue of section 45, a suit has been brought by an advocate for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof—

(a) no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;

(b) unless the bill of costs on which the suit is based is fully itemised, the plaintiff shall file a fully itemized bill of the costs within fourteen days from the date of service of the defence, or such further period as may be allowed by the court, and shall serve a copy thereof on the defendant, and, if the total amount of such bill exceeds the amount sued for, the prayer of the plaintiff shall, subject to the court's pecuniary jurisdiction, be deemed to be increased accordingly and all consequential amendments to the pleadings may be made;

(c)no court or filing fee shall be payable on filing a bill of costs required by this section, but, if thereby the amount for which judgment is prayed in the plaint is deemed to be increased under paragraph (b), the plaintiff shall pay to the court such court or filing fee as may be appropriate to the increase; and

(d)at any time after the bill of costs has been filed, and before the suit has been set down for hearing, any party to the action may take out a summons for directions as to whether such bill should be taxed by the taxing officer before the suit is heard.

16. The suit filed under section 48 is all about costs for the advocate. As matter of fact, under section 48(1), delivery of the bill of costs to the client is a condition precedent to the filing of the suit, where a suit has to be filed. Section 49 (b) reiterates that in such a suit, if the bill of costs delivered to the client under section 48(1) was not fully itemised, it shall be itemised within fourteen days from the date of service of the client's defence, or within such further period that the court may direct. According to section 49(d) the taxation of the bill of costs is given priority over the hearing of the suit and, in any event, it has been noted that under section 49(a) even if the suit was to be heard before the taxation of the bill of costs, no judgment would be entered for the advocate until the bill of costs has been taxed.

17. Turning back to the applicants' application, the costs payable to the advocates are not contested. The record in High Court Miscellaneous Application No. E320 of 2023, in which the advocates filed their advocate/client bill of costs, shows that on 16 June 2025 the advocates agreed that the bill of costs be taxed at Kshs. 11,000,000. Part of the record of the proceedings before the taxing officer, on the material date, read as follows:

“Mr. Mogeni:

We had agreed on a figure. You had recused yourself in the matter; there is a figure. We had agreed at 11 M. There is a consent on record.

Mr. Kinyua: The bill will be taxed at Kshs. 11 M.

Court: By consent the bill be taxed at Kshs. 11 Million. File closed.”

18. A certificate of taxation consistent with this consent was subsequently issued. Contrary to the client's counsel's contention that the consent on the advocates' bill of costs was not adopted by the court, it is clear from the relevant record that it has been adopted. In the wake of that consent, judgment would properly be entered against the defendant under section 49 (a) of the Advocates Act.

19. In their submissions, the advocates acknowledged having received some payment in part settlement of the total sum due but no concrete figure was given. All they said in this respect is:

“6. The only payment made and which we acknowledge receipt on account, was made shortly upon the Court attendance of 29.7.2025. It was in US Dollars exchanging to just about a Million Kenya Shillings.”

It is impossible to tell from this statement how much would be outstanding after the acknowledged payment was made.

20. Accordingly, I hereby allow prayer (c) of the applicant’s application with some condition. Subject to any payments that have so far been made towards settlement of the agreed costs payable to the advocates, judgment is hereby entered for the plaintiffs as against the defendant for the sum of Kshs. 11,000,000.00 in terms of the certificate of taxation dated 16 June 25, in High Court Miscellaneous Civil Application No. E320 of 2023. Interest calculated at court rates shall accrue from the date of the certification of taxation until payment in full.

21. For the reasons I have given, I decline to grant prayer (b) of the application. In any event, I understood the applicants to submit that there is already in place an order for arrest of the ship and since that order has been breached, proceedings for contempt of court against the alleged

contemnor are underway. This, I gather from paragraph 12(a) of the applicants' written submissions where they have urged as follows:

“a) The Motor Vessel 'Mirembe Judith' is foreign owned. The Defendant appear (sic) to have certain powers over Kenya Ports Authority as the latter has not enforced the orders of this Court given on 11.7.2025 even though the Vessel has come and sailed out of the Port of Mombasa at least on two occasions since those orders issued. We are filing separate proceedings for contempt of Court.”

22. The applicant is allowed to the extent I have specified. Parties will bear their respective costs. Orders accordingly.

Signed, dated and circulated on the CTS on 26 February 2026

Ngaah Jairus
JUDGE