

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC CASE NO. 318 OF 2014**

**FRANCIS KURIA MWAURA**  
**MWANGI & 64**  
**OTHERS.....PLAINTIFFS/APPLICANT**

**-VERSUS-**

**KENYA RURAL ROADS AUTHORITY.....1<sup>ST</sup>**  
**DEFENDANT**

**KENYA ROADS BOARD.....2<sup>ND</sup>**  
**DEFENDANT**

**MINISTRY OF LANDS, HOUSING**  
**& URBAN DEVELOPMENT.....3<sup>RD</sup>**  
**DEFENDANT**

**NATIONAL LAND COMMISSION**  
**(THE COMMISSIONER OF LANDS) .....4<sup>TH</sup>**  
**DEFENDANT**

**RULING**

1. The plaintiffs/applicants filed the notice of motion dated 8<sup>th</sup> August, 2025 expressed to be brought under **Section 1A, 1B** and **3A** of the **Civil Procedure Act** and **Sections 45, 55, 56** and **80** of the **Advocates Act** and **Order 51 Rule 1** of the **Civil Procedure Rules** seeking the following orders:-

***1. Spent.***

**2. That Jeremy Njenga T/A J. M. Njenga & Co. Advocates be directed to remit the party and party costs paid to him to the plaintiffs in the sum of Kenya Shillings Eleven Million (11,000,000/=) with interest at court rate from 3<sup>rd</sup> October 2018 until payment in full.**

**3. That the honourable court be pleased to make a finding that Jeremy Njenga Advocate T/A J. M. Njenga & Co. Advocates, by pursuing party and party costs and entering into a consent on the same without informing the plaintiffs and by further receiving and retaining the party and party costs since August, 2018 is guilty of professional misconduct and mete out such punishment that the honourable court shall deem appropriate.**

**4. That the honourable court be pleased to grant any other orders that it may deem fit in the interest of justice.**

2. The application is premised on the grounds inter alia that the plaintiffs/applicants instructed Jeremy Njenga T/A J.M Njenga & Co. Advocates to pursue the matter to enable them claim compensation following the unprocedural compulsory acquisition of the land. The application is supported by the affidavit of the 4<sup>th</sup>

plaintiff/applicant, sworn on his behalf and on behalf of all the plaintiffs/applicants.

3. The 4<sup>th</sup> plaintiff/applicant deposed that having instructed Jeremy Njenga T/A J. M. Njenga & Co. Advocates to pursue the matter to before the court, they entered into retainer agreements, clearly stipulating that the advocates fees would be 15% of the amount recovered, which agreement was adopted by the court vide the consent dated 14<sup>th</sup> June, 2017. He deposed that the national land commission was directed to pay the 15% directly to the advocate.
4. It was deposed that the advocate went back to court and pursued party and party costs and entered into a consent on 6<sup>th</sup> February, 2018 for payment in the sum of Kenya Shillings Eleven Million (Kshs.11,000,000/=) without informing the plaintiffs/ applicants. Further, the party and party costs were paid to the advocate by the 1<sup>st</sup> defendant in two instalments of Kshs.1,043,104/= paid on 8<sup>th</sup> August, 2018 and Kshs.9,956,896/= paid on 3<sup>rd</sup> October, 2018 a fact which has been confirmed by the 1<sup>st</sup> defendant in its letter dated 13<sup>th</sup> January, 2024.
5. The 4<sup>th</sup> plaintiff/applicant deposed that when they learnt about the same from the court record, they questioned him and escalated

the matter to the advocates complaints commission but he vehemently denied having received the payments and even threatened to take action against him for pursuing the costs. Further, the advocate has remained adamant and unless the court compels him to release the funds to the plaintiffs/applicants, the advocate will continue retaining the funds to their great prejudice.

6. In conclusion, the 4<sup>th</sup> plaintiff/applicant deposed that the advocate's actions constitute professional misconduct and the court has the powers to take appropriate measures for the actions.
7. In reply thereto, Jeremy Njenga, advocate filed his replying affidavit sworn on 7<sup>th</sup> of November, 2025. He deposed that as a preliminary point of law issue, the firm of J.N. Njenga Advocate LL.P is not a party in the suit and has been unprocedurally enjoined as a party in the application at hand. He admitted that the understanding between themselves and the applicants is that their 15% advocate-client fees would be deducted from what they were to receive from the 3<sup>rd</sup> defendant.

- 8.** The advocate deposed that the total amount due to the plaintiffs/applicants was Kshs.138,078,150.85/- out of which 15% thereof was to be remitted to the advocate as legal fees. This means that they were to receive a sum of approximately Kshs.20,711,722/= from the 3<sup>rd</sup> defendant. He deposed that he received a gross sum of Kshs.13,031,604.68/- which was then subjected to statutory deductions, and to date, they are yet to be paid the balance of Kshs.7,680,117.32/-. He further deposed that none of the applications was dealing with party and party costs but rather it was the advocate-client fees due to them which was an error on the consent.
- 9.** The advocate deposed that it is a basic rule of evidence that he who alleges must prove and thus he challenged the plaintiffs/applicants to avail proof that after the consent of 6<sup>th</sup> February, 2018 they received the sum of Kshs.11,000,000/=. He highlighted that the plaintiffs/applicants have been to the advocates' disciplinary committee and have now come to court after their claims at the disciplinary committee failed to hold any basis.
- 10.** The 4<sup>th</sup> plaintiff/applicant filed the further affidavit sworn on 21<sup>st</sup> November, 2025. In response to the preliminary point of law raised

in paragraph 4 of the replying affidavit, he deposed that the application is brought under *inter alia* **Section 56** of the **Advocates Act**, which vests powers in this court to deal with misconduct or offences by an advocate committed during, or in the course of, or relating to, proceedings. For this reason, he argued that there is no need for the advocate to be formally joined as a party.

11. The 4<sup>th</sup> plaintiff/applicant maintained their position that the advocate's professional fees were paid directly by the 4<sup>th</sup> defendant pursuant to the agreement in the two letters dated 12<sup>th</sup> June, 2017 (Annexure SMJ 2 in the supporting affidavit) and through adoption as an order of court vide the consent dated 15<sup>th</sup> June, 2017. He deposed that the contention by the advocate that he was not paid the full amount comes as a surprise as it is gross misrepresentation of facts. It was further deposed that if at all the advocate had any query with the computation of 15% payable to him, he ought to have raised it with the 4<sup>th</sup> defendant and he cannot use this argument to justify his act of pursuing party and party costs and failing to remit the same to them when the proceedings of court from September 2017 through to February 2018 shows that he actively pursued the party and party costs on their behalf.

- 12.** The 4<sup>th</sup> plaintiff/applicant deposed that the consent was amended so that the responsibility to pay was expressly shifted from the 4<sup>th</sup> defendant (NLC) to the 1<sup>st</sup> defendant, (KERRA). Subsequent to the consent, the 1<sup>st</sup> defendant paid the party and party costs of Kshs.11,000,000/= to the advocate, a fact which 1<sup>st</sup> defendant confirmed. With regard to the complaint before the advocates complaints commission, the 4<sup>th</sup> plaintiff/applicant deposed that it is still alive and the matter is yet to reach the advocates disciplinary tribunal even though it was filed three years ago.
- 13.** I have considered the application, the replies thereof and the written submissions filed by the respective parties. The issue for determination is *whether the application has merit.*
- 14.** The plaintiffs/applicants contend that the firm of J.M Njenga & Co. Advocates was paid the sum of Kshs.11,000,000/= as party and party costs, which was never remitted to them, despite the said advocate being paid the agreed 15% commission out of the total sum by the 4<sup>th</sup> defendant. It is common knowledge that party and party costs are costs that are awarded to the winning party and do not belong to the advocate, but to the actual party that was awarded the said costs. Advocates reap the reward from their work

through the payment of advocate-client fees, which is not the subject of contention in the instant application.

- 15.** In the case of **Nduati & Company Advocates v Mugo (Miscellaneous Application 18 of 2021) [2025] KEHC 14142 (KLR)**, it was held that:-

***“To allow an advocate to hold a client’s funds hostage for a future, uncertain, and untaxed amount would be to grant them an oppressive tool and would be gross abuse of the right of lien.....The Court of Appeal in Waruhiu K’owade & Ng’ang’a Advocates v Mutune Investment Limited [2016] KECA 835 (KLR) stated thus:-***

***“To allow advocates to retain client funds for no reason at all would be a travesty of justice and would be an abuse of the fiduciary trust given and by extension, would amount to conversion and criminal activity. It would amount to deceit and unjust enrichment and ultimately, would erode public confidence in the administration of justice.”***

- 16.** The 4<sup>th</sup> plaintiff/applicant annexed the consent order given by Lady Justice K. Bor dated 19<sup>th</sup> February, 2017 to the effect that 4<sup>th</sup> defendant was to pay a sum of Kshs.11,000,000/- to the plaintiffs/applicants as party and party costs. The advocate

contended that this was an error on the face of the consent as it referred to advocate-client costs. However, it has not been shown that there was an amendment of the said order if it was erroneous as the advocate contends.

**17.** Further, the plaintiffs/applicants annexed the letter from the 1<sup>st</sup> defendant dated 13<sup>th</sup> January, 2024 confirming payment of the said Kshs.11,000,000/- to the plaintiffs' advocate in two instalments; one instalment paying Kshs.9,956,896.00/- and another payment of Kshs.1,043,104.00/- which payments were made on 8<sup>th</sup> of August, 2018 and 3<sup>rd</sup> of October, 2018 respectively. On the other hand, the advocate contended that proof of this payment has not been demonstrated before the court.

**18.** This court appreciates that the advocates disciplinary tribunal is best placed to investigate and examine the complaints further to establish proof of whether indeed the advocate was paid the said party and party costs of Kshs.11,000,000/- and failed to remit the same to the plaintiffs/applicants.

**19. Section 53 of the Advocates Act** establishes the **Complaints Commission**. It provides:-

***“There is hereby established a Complaints Commission (in this Part referred to as “the Commission”) which shall consist of such commissioner or commissioners as shall be appointed by the President for the purpose of enquiring into complaints against any advocate, firm of advocates, or any member or employees thereof.”***

20. It is trite law that where a dispute resolution mechanism exists, it should be followed. The Court of Appeal in **Speaker of the National Assembly v James Njenga Karume [1992] eKLR** explained the doctrine of exhaustion in the following words:-

***“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”***

21. From the above, I find it suitable that this matter is first considered by the body mandated to do so. Therefore, I hereby direct and refer the allegations of payment and retention of party and party costs to the plaintiffs’ advocate, the firm of J.M Njenga Advocates to the Advocates Complaints Commission for

investigation and referral to the Tribunal if the Commission deems it fit.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 12<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. MBOGO C.G.  
JUDGE  
12/03/2026.**

***In the presence of:***

*Ms. Benson Agunga - Court assistant*

*Mr. Denis Maina for the Plaintiffs/Applicants*

*Ms. Wambua holding brief for Mr. Njenga for the Respondents*

*Mr. Nyakiti holding brief for Mr. Agwara for the 2<sup>nd</sup> Defendant*

*/Respondent*