



**Kibatia & Co Advocates LLP v Obama Enterprises Limited & 2  
others (Commercial Miscellaneous Application E524 of 2025)  
[2026] KEHC 4123 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4123 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E524 OF 2025  
MA OTIENO, J  
MARCH 19, 2026**

**BETWEEN**

**KIBATIA & CO ADVOCATES LLP ..... APPLICANT**

**AND**

**OBAMA ENTERPRISES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SAMMY MUITA MUREITHI ..... 2<sup>ND</sup> RESPONDENT**

**CAROLINE MAUREEN THUIYA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is a Notice of Motion dated 9th February 2026, brought by the firm of Kibatia & Co Advocates LLP (the Applicant), seeks the following primary orders:
  - i. That judgment be entered for the sum of Kshs. 500,000 as taxed and certified by the Deputy Registrar.
  - ii. That the Applicant be at liberty to execute against the Respondents.
  - iii. That costs of the application be borne by the Respondents.
2. The Application is grounded on the provisions of Section 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules, and Schedule 6 of the Advocates Remuneration Order. It is supported by the affidavit of Karuga Maina, sworn on 9th February 2026, which sets out the factual basis of the application. The Applicant avers that it acted for the Respondents in HC Civil Case No. 135 of 2021 – Obama Enterprise Limited & Another vs Kenya Women Microfinance Bank Ltd, where injunctive relief was sought to stop the sale of property Kiambu/Kikuyu Trading Centre/43.



3. It was further the Applicant's contention that upon conclusion of the matter, unpaid legal fees amounted to Kshs. 502,000. Subsequently, an Advocate-Client Bill of Costs was filed on 19th May 2025, later settled through a written Consent dated 28th July 2025, which the Court adopted on 20th January 2026.
4. The Applicant asserted that the Consent required the Respondents to pay Kshs. 500,000 on or before 31st August 2025, failing which execution would issue. The Respondents have failed to honour the consent by making the requisite payment under the consent, hence the present application for a formal Decree to commence execution.
5. Despite service, the Respondents did not file any response to the Application, nor did they file any submissions.

### **Analysis and Determination**

6. The facts underlying this matter are largely uncontested. The Applicant previously represented the Respondents in HC Civil Case No. 135 of 2021. Following the conclusion of that matter, a dispute arose regarding outstanding legal fees totaling Kshs. 502,000. Consequently, the Applicant filed an Advocate-Client Bill of Costs on 19th May 2025.
7. The parties subsequently entered into a Consent dated 28th July 2025, which was formally adopted as an Order of the Court on 20th January 2026. The terms of the Consent were explicit:
  - i. The Respondents were to pay Kshs. 500,000 on or before 31st August 2025.
  - ii. In default of such payment, execution was to issue.
8. The Applicant deposes that the said payment deadline has passed and the Respondents remain in default. For the Applicant to realize the fruits of the Order dated 20th January 2026, it is necessary to convert the said Order into a Decree to facilitate the execution process.
9. In the present case, I have considered the Application and the supporting documents, including the exhibit marked KM-2, being the Court Order signed by Hon. Noelle Kyanya (DR). It is clear that a valid agreement exists between the parties, sanctioned by this Court, which the Respondents have failed to honor.
10. Under Section 51(2) of the Advocates, once a Bill of Costs is taxed or settled by consent and a certificate of taxation (or its equivalent in an order) is issued, it may be enforced as a judgment of the Court. The Supreme Court in *Kenya Airports Authority v Otieno, Ragot & Company Advocates* [2023] KESC 56 (KLR), stated as follows regarding the wordings employed under Section 51(2):

“The words employed in the above provision are clear and demonstrate that the intention of the Legislature is that the costs ascertained by the certificate of taxation or costs, are final with respect to costs covered therein. In other words, a certificate of taxed Party-Party costs is final on the costs/fees ascertained in the Party-Party costs.....”
11. Further, it is a settled principle of law that a consent order is a contract between the parties which has been given the sanction of the Court and cannot be set aside except on grounds that would justify setting aside a contract, such as fraud or mistake. The Court of Appeal in *Wasike v Wamboko* [1985] KECA 149 (KLR), stated as follows on the legal status of consents:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions



remain to be fulfilled, which are not carried out: see the decision of this court in J M Mwakio v Kenya Commercial Bank Ltd Civil Appeals 28 of 1982 and 69 of 1983. In Purcell v F C Trigell Ltd [1970] 2 All ER 671, Winn LJ said at 676;

“It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.”

12. Similarly, In A A A v G F [2014] KEHC 3328 (KLR), the Court (M. Odero) stated as follows on the status of consents:

“As I stated earlier a consent is an agreement entered into voluntarily between the parties and is enforceable as a contract between the two. Courts should be slow to alter and/or vary the terms of only consent except in cases of fraud and/or illegality.”

13. In the present case, in the absence of any rebuttal from the Respondent, the Court has no basis upon which to question the Applicant’s averments. More importantly, no material has been placed before the Court to suggest the existence of fraud, collusion, illegality, mistake, or any other ground that would justify the setting aside or variation of a consent, which, as has been hereinabove established, is by law binding upon the parties.

14. The inevitable conclusion, therefore, is that the Application is hereby found to be meritorious. In the interest of justice and to ensure the finality of the Court’s recorded settlement, the following orders are hereby granted:

- i. Judgment be and is hereby entered for the Applicant against the Respondents jointly and severally in the sum of Kshs. 500,000.
- ii. Leave is hereby granted to the Applicant to pursue execution against the Respondents for the recovery of the said sum.
- iii. The Deputy Registrar shall process and issue the Decree forthwith.
- iv. Costs of this Application, which is hereby assessed at Kshs. 50,000/= are awarded to the Applicant.

15. Is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH, 2026**

**ADO MOSES**

**JUDGE**

In the presence of:

Lanoi.....for Applicant/Advocate

N/A.....for Respondent/Client

Moses.....C/A

