

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
JUDICIAL REVIEW DIVISION

HCJR NO. E012 OF 2025

KAHUTHU & KAHUTHU ADVOCATESAPPLICANT

VERSUS

DOVEY PHARMA LIMITEDRESPONDENT/APPLICANT

RULING

1. The Applicant through the Application dated 12th August, 2025 seeks orders:
 - 1) Spent.
 - 2) THAT pending the hearing and determination of this Application, there be a stay of execution of the Warrant of Attachment issued on 7th August 2025 in JR Misc. Application No. 347 of 2018 in favour of Kahuthu & Kahuthu Advocates.
 - 3) THAT pending the hearing and determination of the main suit or any further orders of this Honourable Court, there be a stay of execution of the said warrant and of the Proclamation of Attachment dated 11th August 2025 issued by Bemac Auctioneers.
 - 4) THAT the costs of this Application be in the cause.
 - 5) Any other further relief that this honorable court may deem fit and just to grant in the circumstances.

The Applicants Case:

2. It is the Applicant's case that on 7th August 2025 this Honourable Court issued a Warrant of Attachment against its movable property in execution of an alleged decretal amount of Kshs. 147,455 in favor of Kahuthu & Kahuthu Advocates. Pursuant to this, on 11th August 2025 Bemac Auctioneers issued a Proclamation of Attachment of its property of an estimated value of Kshs. 390,000, seeking to recover the alleged decretal sum plus auctioneer's fees of Kshs. 84,700/-.
3. The Applicant denies that it ever instructed the Applicant to act for it in JR Misc. Application No. 347 of 2018. That the law firm, once represented Dovey Pharma Limited in Nairobi HCCC No. E108 of 2021 – Dovey Pharma Limited v Patrick Macharia Nderitu & Pimp My Ride East Africa Limited but he abandoned the matter before conclusion forcing it to instructed Wahito Githinji Advocates.
4. The Applicant argues that the Applicant's demand for payment in respect of the JR matter is therefore made in bad faith, is tainted by unclean hands, and amounts to an attempt at unjust enrichment. It also argues that in HCCCMISC/E986/2024 – Antony Mageria v Dovey Pharma Limited, the taxing officer found the Advocate/Respondent's fee claim grossly exaggerated, reducing the instruction fee from Kshs. 300,000/= to Kshs. 165,000/= and taxing off several items for being misconceived.

5. The Applicant argues that it only became aware of the instant matter when served with the proclamation of attachment dated 11th August 2025 by Bemac Auctioneers. It also argues that in any event the proclaimed property includes essential business tools and equipment, and their attachment and sale will cripple our operations and cause irreparable loss.
6. It is the Appellant's case that the execution process is grossly disproportionate to the alleged debt, in violation of principles of fairness and equity.

The Applicants Submissions:

7. The Applicant submits that according to the Applicant there was no lawful retainer between it and the Respondent in JR Misc. Application No. 347 of 2018 and consequently the taxation and execution founded upon it are unsustainable in law.
8. It is its case that an advocate must demonstrate the existence of a valid advocate-client relationship before claiming fees. That Dovey Pharma Limited is a limited liability company and the company acts strictly through its Board of Directors and formal corporate resolutions. There is no evidence of any board resolution appointing the Applicant, Any written instructions, any engagement letter; or any authority granted to represent the Company. In the absence of proof of retainer, the burden lies on the Applicant to establish the legal foundation of their claim.

9. According to the Applicant where no retainer exists there is no contractual basis for fees The Bill of Costs is incompetent, The Certificate of Taxation is irregular and the Execution founded upon such taxation is unlawful.
10. It is the Applicant's case that Court records indicate that related proceedings were marked as settled and closed. Despite this no settlement terms were disclosed to the Company, no consent was furnished, no statement of account has been rendered and no client ledger has been produced. It relies on Section 52 of the Advocates Act which it submits obligates an advocate to deliver a full and proper account upon demand by a client. The Respondent has formally demanded such accounts. None have been provided.
11. It is its case that if the execution proceeds it will suffer irreparable harm and the pending Application will be rendered nugatory, in the event the Court later finds that no retainer existed, rendering execution unjust. The balance of justice therefore favors preservation pending determination and it respectfully prays that this Honourable Court:
 - a) Finds that no lawful retainer existed;
 - b) Sets aside the Certificate of Taxation dated 4th August 2025;
 - c) Nullifies the execution proceedings;
 - d) Orders delivery of full accounts under Section 52 of the Advocates Act;
 - e) Awards costs personally against the Applicant.

The Respondent's case:

12. In opposing the Application, the Applicant filed a replying affidavit dated 19th September 2026. The Respondent argues that it served the Taxation Ruling and the Applicant should have filed a reference to oppose the sum taxed not to set aside taxation.
13. That the Application is an afterthought and brought to defeat payment of costs as taxed in JR Misc. Application 347 of 2018-Nairobi where the Respondent was an Interested Party and had appointed the Applicant herein to Act for them in that Application and JR 326 of 2018-Nairobi.
14. The Applicant advanced an allegation that Kahuthu advocates were not instructed. In the contrary, the documents filed in the Application for judicial review in cause No. JR. MISC. APPL. NO. 347 OF 2018 on record are self-explanatory.
15. It submits that the Application is an abuse of the courts process by a party not intending to settle legal fee and the ground of no lawful retainer cannot hold water at this junction. Fees was demanded after failure to pay hence the reference for taxation and the objection to the already taxed bill should be dismissed as it has been overtaken by events and no stay of execution should be granted and the fee as taxed by the taxing master. Reliance is placed on HCMISC. Appl. No. 330 of 2005-Nairobi Kahuthu Advocates Ochieng' Onyango, Kibet & Ohaga Advocates vs Akiba Bank Limited.

Analysis and determination;

16. The issues for determination:

1) Whether the Application has merit.

2) Who should pay costs.

17. The principles guiding the grant of stay of execution pending appeal are well settled under Order 42 Rule 6 of the Civil Procedure Rules. They include the following.

a) That the court must be satisfied that substantial loss may result to the Applicant unless the order is made.

b) The Application has been made without unreasonable delay.

c) That security as the court orders for due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.

18. In the case of Vishran Ravji Halae v Thorntone & Turpin C. A. NO. 15 of 1990 (1990) KLR 365 it was held,

“Whether an Application is for stay of execution or injunction one fundamental principle is for the court to take whatever route that appears to carry the lower risk of injustice and prejudice to the parties, in the event it turns out that grant or denial of the equitable remedy was not justified. The other consideration being that a successful litigant should not be deprived of the fruits of his or her judgment without sufficient good cause.”

19. In **Hammuel Sundarel Solicitors Vs. Agrichem International Holdings Limited (EWCA Civil 2065) Clerke L.J** opined that:

“Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether, there is a risk of injustice to one or other or both parties if it grants or refuses stay.”

20. The court is persuaded that the proclaimed property includes essential business tools and equipment, medicine and their attachment and sale will probably cripple our operations and cause irreparable loss.

21. The court on the other hand is aware of the fact that there is an order in favour of the Respondent in relation to costs.

22. The issue of the retainer and the issue of accounts are not part of the reliefs sought and the court is limited to the prayers as sought in the Application.

23. The court has looked at the competing rights.

Order:

In order to create a balance the court orders;

- 1) That pending the hearing and determination of the main Application a stay of execution of the warrant and of the Proclamation of

Attachment dated 11th August 2025 issued by Bemac Auctioneers is hereby issued.

2) The Applicant shall deposit the decretal amount in court within 14 days.

3) In the event this is not done, then the stay order shall lapse.

4) Costs in the cause.

Dated, Signed and Delivered virtually at Eldoret this 30th Day of April, 2026.

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J. CHIGITI (SC)

JUDGE