



**Patel & 2 others v Gloria Nakova & Associates Advocates; Gitau (Interested Party)
(Environment and Land Case E527 of 2025) [2026] KEELC 2636 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E527 OF 2025**

CA OCHIENG, J

MAY 6, 2026

BETWEEN

AZMINA PATEL 1ST PLAINTIFF

NEHA PATEL 2ND PLAINTIFF

NASRIN MANJI 3RD PLAINTIFF

AND

GLORIA NAKOVA & ASSOCIATES ADVOCATES DEFENDANT

AND

JUDY GITAU INTERESTED PARTY

RULING

1. What is before the Court for determination is the Plaintiffs' Originating summons dated 16th June 2025 where they seek the following Orders:
 - a. Spent.
 - b. Spent.
 - c. This Honourable Court be pleased to order the firm of Messrs. Gloria Nakova and Associates Advocates to pay the sum of Ksh. 1,056,000 together with interest at court rates from the date of receipt to the Applicants or their advocates on record Desai & Co Advocates.
 - d. This Honourable Court be pleased to order the firm of Messrs.' Gloria Nakova and Associates Advocates to release the documents they hold on to on behalf of the Applicants to enable them to defend the suit in the Magistrates Court MCELC/E192/2024- Judy Gitau v Azmina Patel, Neha Patel and 2 Others.



- e. This Honourable Court be pleased to make any other orders as it deems fit in the circumstances; and
 - f. That the costs of this Application be provided for.
2. The Originating Summons is premised on grounds on its face and on the 2nd Plaintiff's supporting affidavit. She avers that on 28th April 2021, the Plaintiffs entered into a Tenancy Agreement with the Interested Party to rent an unfurnished three (3) - bedroom apartment with two (2) allocated parking bays and one (1) storage space on LR No. 4580/27, for a term of three (3) years commencing from 1st May 2021 to 31st April 2024. Further, as a term of the Tenancy Agreement, rent payable was Kshs.180,000/= inclusive of service charge with an escalation projection of up to a maximum of 5% on the monthly rent thus at the time of the rental dispute, rent payable was Kshs.187, 500/=.
 3. She claims that in 2024, the Interested Party fell into arrears and moved the Magistrate's Court seeking orders to restrain the Plaintiffs' from levying distress and by an Order dated 12th July 2024, Hon. A. Makenga dismissed her application with costs. She explains that subsequently, she proposed to pay the arrears which she did pay by five (5) instalments that were done as follows: Kshs.60,000/= to Akuku Agencies, Kshs.180,000/= to Lawrence Mugambi of Icon Auctioneers while Kshs.600, 000/=, Kshs.200,000 and Kshs.256,000/= were paid to the Defendant on 2nd August 2024. She avers that in total, Kshs.1,056,000/= was paid with the insistence of Ms. Gloria Nakova Advocate, paid directly into her personal account at Equity Bank, which action contravenes Rule 4 of the Advocates (Account) Rules.
 4. She claims that despite the Defendant being paid on the Plaintiffs' behalf, it is yet to release the funds to them. Further, she has refused to account for the said monies and its proprietor, Ms. Gloria Nakova has become uncooperative and difficult to trace. In addition, the Defendant has refused to release documents it holds on behalf of the Plaintiffs thereby compromising their ability to defend MCELC/ E192/2024- Judy Gitau v Azmina Patel, Neha Patel and 2 Others filed at the Magistrate's court.

Responses

5. The Interested Party filed a response in support of the Plaintiff's application. She confirms that she paid money to the Defendant in five (5) instalments as enumerated at paragraph 3 herein and thereafter vide a letter dated 8th August 2024, she wrote to the Defendant requesting acknowledgement of payments but they did not elicit a response. She concurs with the Plaintiffs that the Defendant had no right to withhold money that she paid in full settlement of her outstanding debt owed to them.
6. In opposition, the Defendant filed a replying affidavit sworn by Gloriam Lucky Amondi, Advocate. She avers that she was instructed by the Plaintiffs in the matter to recover rent arrears on their behalf. She explains that they settled on Kshs.380,000 as her legal fees and about Kshs.300,000 for auctioneers. Subsequently, she issued a notice to vacate and demand for payment of rent arrears, renovation costs and costs for execution to the Interested Party. She then wrote to Okuku Auctioneers to act and recover unpaid rent which at the time was Kshs.480,000/=.
7. In response to the demand, the Interested Party instituted Milimani Commercial Chief Magistrate's MCELC/E192/2024 and filed an application seeking to halt the intended auction, which she successfully defended. She then instructed Icon Auctioneers to distress for rent, a decision reached by the Plaintiffs themselves, who also instructed her to apply to court for facilitation of the auctioneers to distress for rent thus she filed Milimani Commercial Misc. Appl E1351 of 2024 on 30th July, 2024 and the next day, the Court allowed Icon Auctioneers to break and enter the demised premises with



- the assistance of Kileleshwa Police Station for the purpose of auctioning movable property to recover KShs.1,011,320/= plus incidental costs of the attachment.
8. She insists that the previous auctioneers retained, Okuku Auctioneers, later disclosed that they had received a copy of application for Funds Transfer form through RTGS for KShs.842,800 from the Interested Party's account to the 2nd Plaintiff's account as proof that she had settled the rent. Further, that the said auctioneer had also received KShs.60,000 as auctioneers' fees and costs. However, when the Interested Party produced the purported RTGS payment to the 2nd Plaintiff, it turned out it was forged and no such payment had been made as it was confirmed by the Plaintiffs.
 9. She reiterates that following the development, Icon Auctioneers were given the go ahead to carry on with the auction. Further, that they hired lorries to transport movable property of the Interested Party but while at the suit property to execute, the Interested Party's brother called them and pleaded with them to halt the execution. She confirms that the brother asked for an Equity Bank account to which he deposited KShs.600,000 to their account. Further, he also forwarded screenshot of messages that two other individuals had made deposits of KShs.200,000 and KShs.256,000 respectively. She avers that she paid Icon Auctioneers their costs for that day which were KShs.180,000/= with the approval of the Plaintiffs and the Interested Party, was given a grace period to settle the balance.
 10. She contends that on 10th August, 2024 Icon Auctioneers with the instructions of the Plaintiffs through her, sought to distress for rent and the Interested Party elected to leave the suit premises, adding that the auctioneer's costs and charges for that day were KShs.120,000/= which she paid with the approval of the Plaintiffs.
 11. She admits that on 2nd August, 2025, she received a total of KShs.1,056,000= out of which KShs.680,000 were charges and costs in form of initial legal fees and auctioneer's fees agreed upon, which leave a net of KShs.376,000/= that she is willing and ready to pay to the person the Court orders her to pay or to deposit the same in Court pending the determination, on who is entitled to the said amount.
 12. She further confirms that she subsequently received a demand letter from the Interested Party's advocate dated 28th August, 2024, after she had vacated the suit premises, claiming that she had made an over payment of KShs.653,200/= and she demanded that she personally pays the same back.
 13. She points out that she has provided further legal services for the Plaintiffs and that the same is pending taxation at the High Court Commercial and Tax Division, in Misc. Case No. E820 OF 2025. Further, that she does not have any original documents belonging to the Plaintiffs but she is ready to share copies of any documents the Plaintiffs or their advocates may require.
 14. In response, the Plaintiffs filed a further affidavit in which the 2nd Plaintiff avers that under Rule 7 of the Auctioneer Rules, the debtor is required to pay charges of the auctioneer and in this case, the Interested Party paid Okuku Agencies KShs.60,000/= and Icon Auctioneers KShs.180,000/= thus the additional payment of KShs.300,000/= to Icon Auctioneers without legal basis and approval from the client is gross misconduct. Further, that it cannot be that Icon Auctioneers issued two different invoices on the same transaction. She also avers that the alleged taxation proceedings in HCC COMMISC / E820/25 was dismissed with costs on 15th December 2025, thus the Plaintiffs do not owe any fees to the Defendant.
 15. She further contends that after the Interested Party vacated the suit premises, it was extensively damaged, the Plaintiffs had to incur costs of KShs.200,000/= to renovate it and later submitted the renovation receipts to the Defendant's law firm for her to recover special damages from the Interested Party but she withheld them.



Submissions

16. The Plaintiffs submit that an advocate is a trustee of the client's funds thus the Defendant has the responsibility of a fiduciary towards them. Further, that under Rule 7 of the Auctioneer Rules, the debtor is required to pay the charges of the auctioneer and in this case, the Interested Party paid Okuku Agencies Kshs.60,000/= and Icon Auctioneers Kshs.180,000/= for their services as required by law thus the alleged additional payment of Kshs.300,000/= to Icon Auctioneers without legal basis and approval from the client is gross professional misconduct. The Plaintiffs also reiterate that the receipts produced in support of those payments are forgeries.
17. The Plaintiffs insist that the Defendant is holding receipts for the costs they incurred in restoring the premises to the tune of Kshs.200,000/= which Ms. Gloria Nakova refused to release to their new lawyers which they need to claim for special damages in MCELC/E192/2024. Further, that continued withholding of the said receipts will deny them their constitutional right to fair trial.
18. They also insist that they do not owe any legal fees to the Defendant's law firm as a taxation reference filed by the Defendant on 30th July 2025 drawn at Kshs.683,115/= was dismissed with costs by Hon. Chembeni Adisa on 15th December 2025. Further, that the Plaintiff could also not have signed a "Client Fees Agreement" to pay Kshs.960,000/= to recover Kshs.480,000/= and if it was a valid contract, the Defendant ought to enforce it.
19. On its part, the Defendant submits that there is a general lien which confers upon an advocate a right to retain all papers, money or other chattel of their clients, which come into their possession as their clients' advocate until all the costs and charges due to the advocates are paid. To support her arguments, it relied on the following decisions: Clement Munyao Kakenyi v Florence Mwangangi & Company Advocates [2021] eKLR and Kenya Commercial Bank Ltd v Suntra Investment Bank Ltd [2015] eKLR.
20. It also submits that since the Interested party claimed that she made payments in excess and the Plaintiff has also made a claim to the money, it amounts to two parties claiming adversely over the same debt and under section 58 of the *Civil Procedure Act*, a party holding contested funds must await the Court's directions before release. To this end, it relied on the case of Kenya Commercial Bank Ltd v Suntra Investment Bank Ltd [2015] eKLR.
21. The Defendant also submits that the Client Fees Agreement dated 24th April 2024, executed between the 2nd Plaintiff and itself indicates that legal fees were agreed upon but they refuse to acknowledge it and the Auctioneer fees being Kshs.300,000/=. It argues that where there is an agreement for the settlement of Advocates fees, the same automatically falls within the premise of the Law of Contract and this Court does not have jurisdiction to interfere with that contract. It insists that it has no interest in the amounts it holds save for the sum owed by the Plaintiffs and the charges due.
22. To buttress its submissions, it relied on the following decisions: Muriithi Kireria & Associates Advocates v Mhasibu Sacco Society Limited [2025] KEHC890 (KLR); Otwal t/a Asembo Soko Limited v Onyango Jonyo & Company Advocates [2025] KEHC 1056 (KLR) and Corporate Insurance Company Limited v Kang'ethe and Mola Advocates [2021] KEHC 5650 (KLR).

Analysis and Determination

23. Upon consideration of the instant Originating Summons including the respective affidavits and rivaling submissions, the only issue for determination is whether the Defendant should release Kshs.1,056,000/= together with documents, to the Plaintiffs.



24. The Plaintiffs allege that the Interested Party paid the Defendant Kshs.1,056,000/= on their behalf, being money that she owed them as rent arrears. Further, that the Defendant has failed to remit the funds to them. They contend that the funds were irregularly deposited into the personal account of Ms. Gloria Nakova, at her insistence, contrary to Rule 4 of the Advocates (Accounts) Rules.
25. The Defendant does not dispute that it received Kshs.1,056,000/= from the Interested Party as alleged by the Plaintiffs. However, it contends that it deducted legal fees of Kshs.380,000/= and other Auctioneers costs of Kshs.300,000/= and that only Kshs.376,000/= remains, which it is willing to release, but it does not know who to pay as the Interested Party has also demanded the money, claiming she overpaid.
26. 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.”
27. In *Kim Jong Kyu v Housing Finance Company Ltd & 2 others* [2015] eKLR, it was held that:
- “In our legal system, the advocate/client relationship has long been recognized as Fiduciary relationship in which the client places his or her confidence, faith, reliance and trust in the advocate, whose aid, advice, opinion or protection is sought from time to time. The client gives the advocate significant amount of control over the matter in which the brief relates. With this relationship comes certain duties and responsibilities on the advocate. These duties and responsibilities are provided for in the statute and the rules of conduct as we demonstrate below. The sets of rules that govern the advocates’ professional conduct arise out of the duty that they owe to the court, their clients, and fellow advocates. Section 80 of the *Advocates Act* stresses the advocate’s duty to a client; “80. Betrayal of trust Any person who, being an advocate, is entrusted in his professional capacity with any money, valuable security or other property to retain it in safe custody with instructions to pay or apply it for any purpose in connection with his duty as an advocate fails to pay, apply or account for the same after due completion of the purpose for which it was given, shall be guilty of an offence:”
28. Further in *Nelson Andayi Havi t/a Havi & Company Advocates v Jane Muthoni Njaget/a J.M Njage & Company Advocates* (2015) eKLR, it was stated that:
- “It may be said that, conduct such as being complicit or deliberately withholding plaintiff’s money would earn the advocate penalty in form of interest for having denied the plaintiff his money.”
29. In this instance, the Defendant has not denied that she received a total of Kshs.1,056,000/= from the Interested Party. Further, she claimed that her legal fees was Kshs.380,000/=. I however note that in the Lower Court case, where she represented the Plaintiffs against the Interested Party, the suit had been dismissed with costs and she does not indicate what happened to the said costs. I further note in her explanation, most of the monies she claims were paid to the Auctioneer, which fact is disputed by the Plaintiffs who insist that it is the Interested Party who was to pay the Auctioneer and not them. The Defendant explained that there is a payment of Kshs.120,000 that was paid to the Auctioneer,



yet I note no work was done as the Interested Party had already moved out of the suit premises. The Plaintiffs contend that the Defendant is also withholding renovation receipts, and that without them, they are prejudiced since they will not be able to prove their prayer for special damages in MCELC/E192/2024- Judy Gitau v Azmina Patel, Neha Patel and 2 Others. The Defendant on the other hand argues that it can hold documents as lien but insists that it released all the documents to the Plaintiffs.

30. Courts have held that an advocate's lien over a file/documents is a legitimate protection mechanism for unpaid fees, but it cannot extend to fettering the Plaintiff's access to justice. It was stated as follows in *Wakaba v County Government of Kiambu (Environment and Land Case 30 of 2021) [2025] KEELC 7223 (KLR) (16 October 2025) (Ruling)*:

“The Respondent's counsel's objection is premised on non-payment of professional fees and a claim for a lien over the file. However, the court is guided by the established principle that a dispute over fees does not bar a client from changing advocates. The proper recourse for an advocate in such circumstances lies in the taxation of the advocate-client bill of costs or recovery proceedings under the *Advocates Act*..... The court notes that the advocate's lien over the file is a legitimate protection mechanism for unpaid fees, but it cannot extend to fettering the Plaintiff's access to justice or choice of representation. The proper balance lies in allowing the change while preserving the outgoing advocate's right to pursue his fees.”

31. The Defendant claims that Section 58 of the *Civil Procedure Act* should apply since the balance of Kshs.376,000/= which it is willing to release is claimed by both the Plaintiffs and the Interested Party. The Interested Party contends that it wrote to the Defendant seeking an acknowledgement of what she paid. Section 58 of the *Civil Procedure Act* states inter alia:

“Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants, or where a suit dealing with the same subject-matter is pending may intervene by motion on notice in such suit, for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself: Provided that where any suit is pending in which the rights of all parties can be properly decided no such suit of interpleader shall be instituted.”

32. Based on the facts as presented while associating myself with the decisions quoted, I find that the Defendant's action of withholding documents and monies from the Plaintiffs' is an illegality. Further, since there was already an award of costs in the related lower Court file and she has not explained what happened to the said costs, noting that her Bill of Costs was struck out, the Plaintiffs are indeed entitled to the monies paid by the Interested Party as rent arrears.

33. The Defendant has not denied that the Interested Party, as the debtor in accordance with Rule 7 of the Auctioneers Rules, paid Okuku Agencies Kshs.60,000/= and Icon Auctioneers Kshs.180,000/=. In my view, the alleged additional payment of Kshs.300,000/= to Icon Auctioneers as claimed by the Defendant did not have any legal basis. I opine that she could not have paid the alleged Auctioneer's fees without instructions from the Plaintiffs,' who were her clients. To my mind there seems to be an element of bad faith on the part of the Defendant yet it was in a fiduciary relationship with the Plaintiffs. I opine that the proper recourse in this instance was for the Defendant to file her Advocate Client Bill of Costs for taxation or a Civil suit to claim the monies owed. Further, I note the Defendant is withholding the Plaintiffs' documents as lien and even if this is a legitimate protection mechanism



for unpaid fees, the Defendant should not block the Plaintiffs from having documents to prove their claim for Special Damages as this will hamper their access to justice. I further find that it was improper for the Defendant to insist that the monies be paid to the personal account of Gloria Nakova at Equity Bank as this contravenes Rule 4 of the Advocates (Acc0unts) Rules.

34. In the foregoing, I find the instant Originating Summons merited and will allow it in the following terms:
- i. The firm of Messrs. Gloria Nakova and Associates Advocates be and is hereby ordered to pay the sum of Kshs.1,056,000 to the Applicants or their advocates on record Desai & Co Advocates within thirty (30) days from the date hereof.
 - ii. The firm of Messrs.' Gloria Nakova and Associates Advocates is hereby ordered to release the documents they hold on to on behalf of the Applicants to enable them to defend the suit in the Magistrates Court MCELC/E192/2024- Judy Gitau v Azmina Patel, Neha Patel and 2 Others.
 - ii. The Costs of this application is awarded to the Plaintiffs.
 - ii. Interest on (i) and (iii) above awarded from 6th May 2026 until payment in full.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MAY, 2026

CHRISTINE OCHIENG

JUDGE

In the presence of:

Masiga for Plaintiffs

Ms Wanjohi for Mbugua Munyiri for Defendant

Komuruga for Interested Party

Court Assistant: Joan

