



Ruai Central 54 Association (Suing through Julius Ntorono Kubai, Erastus Nyambutu Migosi Beatrice Mumbi Njoroge) v Ng'ang'a & another (Environment and Land Miscellaneous Application E167 of 2024) [2025] KEELC 5411 (KLR) (21 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5411 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E167 OF 2024**

**CG MBOGO, J
JULY 21, 2025**

BETWEEN

**RUAI CENTRAL 54 ASSOCIATION APPLICANT
SUING THROUGH JULIUS NTORONO KUBAI, ERASTUS NYAMBUTU
MIGOSI BEATRICE MUMBI NJOROGE**

AND

**PADDY KAMAU NG'ANG'A 1ST RESPONDENT
GEORGE WANYUTU BORO 2ND RESPONDENT**

RULING

1. Before this court for determination is the originating summons dated 14th February, 2025 filed by the applicant seeking a determination of the following questions: -
 1. A declaration that the ruling delivered by the taxing officer amount to a judgment of this honourable court.
 2. A declaration that the certificate of taxation dated 17th July, 2024 amounts to a decree pursuant to which execution can be effected.
 3. An order that the amount taxed shall accrue interest from the date of the ruling until payment in full.
 4. That costs of this application be borne by the respondents.
 5. Any other or further orders that the court deems necessary to serve the course of justice.
2. The application is premised on the grounds on its face. The application is supported by the affidavit of Julius Ntorono Kubai sworn on even date. In his affidavit, the applicant deposed that a ruling in



respect of the taxation of the Bill of Costs was issued on 14th July, 2022 and a certificate of taxation was issued on 17th July, 2024. The applicant submitted that the respondents have refused to pay the taxed costs, and that unless the court converts the taxed amount into a judgment, decree and order accrual of interest, they will be denied the benefit thereof.

3. The 2nd respondent filed grounds of opposition dated 27th February, 2025 challenging the notice of motion dated 14th February, 2025 on the following grounds:-
 1. The application is incurably defective and irregular because the purported applicant from the application, Ruai Central 54 Association is not a party to the instant proceedings in ELC MISC No. E167 of 2024 and thus has no locus standi to file the instant application.
 2. The change/ alteration of the applicant party from Mary Wanjuhi Muigai t/ a Muigai Kemei & Associate Advocates to Ruai Central 54 Association whether through substitution, transfer of rights or any other modification, without leave of the court has effectively altered the person or entity with the original locus standi, the resultant effect that the entire application is grossly defective and incompetent in law because Ruai Central 54 Association has locus before this honourable court.
 3. The application dated 14th February 2025 in its entirety generally lacks the proper legal foundation in the proceedings before this honourable court and thus the application dated 14th February, 2025 ought to be dismissed with costs.
 4. That the proper recourse in law for enforcement of the certificate of taxation is for Ruai Central 54 Association to file the appropriate application within the original suit ELC 694 of 2014.
 5. The application dated 14th February 2025 be dismissed with costs to the 2nd respondent.
4. The applicant filed its reply thereof which was sworn on 14th April, 2025. The applicant deposed that the grounds of opposition are not based on any particular provision of the law, and that it is keen to frustrate the payment of costs to the advocates for the services rendered. Further, that justice is hinged on two pillars of reward and punishment and that unless the pillars are put into practice, justice will not be done and neither will it be seen to be done.
5. The application was canvassed by way of written submissions. The applicant filed its written submissions dated 14th February, 2025. The applicant submitted that the claim of irregularity in the application is without basis as it was demonstrated through the ruling and certificate of taxation annexed to the application. To buttress on this submission, the applicant relied on the case of Muumbo & another (C/o Muigai Kemei & Associates Advocates) v Mwingi View Point Lodge Limited & 8 others [2024] KEELC 6921 (KLR).
6. The applicant further submitted that 1st respondent must suffer similar fate with the 2nd respondent because he did not pay his share of costs which is an indication of culpability.
7. The 2nd respondent filed his written submissions dated 30th April, 2025. He submitted that the instant application having been filed by way of a miscellaneous application which was withdrawn on 7th April, 2025, the court became functus officio. Reliance was placed in the case of Bellevue Development Company Limited v Vinayak Builders Limited & another [2014] eKLR. The 2nd respondent further submitted that the applicant has no locus standi, and that this court has not through substitution, leave, transfer of rights or any other modification altered the person or entity of Mary Wanjuhi Muigai t/a Muigai Kemei & Associates Advocates, which is different from the party that filed the instant proceedings.



8. The 2nd respondent submitted that the instant application is not one where the court can exercise supplementary jurisdiction after the withdrawal of a miscellaneous application. Further, that the applicant has no right to be heard before the court, and that this is not a technicality curable under Article 159 of *the Constitution* but a substantive breach.
9. I have considered the application, the replies thereof and the written submissions filed by the parties herein. Perhaps there is need to clarify certain issues arising from the application. I do note that the 2nd respondent vehemently opposes the notice of motion dated 14th February, 2025. This notice of motion was seeking to withdraw the notice of motion dated 29th August, 2024 and substituting the same with the instant application. On 27th February, 2025 when this matter came up for rulings, the court allowed the notice of motion dated 14th February, 2025. In essence, therefore, the applicant was allowed to prosecute the originating summons annexed to the application.
10. Having stated the above, and in my view, the issue for determination is whether the orders sought in the originating summons ought to issue.
11. Order 34 Rules 1 and 2 (a) of the Civil Procedure Rules provides as follows:-
 - “ 1. An application for relief under this Order shall be made by originating summons unless made in a pending suit in which case it shall be made by summons in the suit.
 2. In every suit of or application by way of interpleader the applicant shall satisfy the court by way of affidavit or otherwise -- (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs...”
12. From the above, it is quite clear that a claim for costs can be made through originating summons as it is with the matter before me. From the pleadings on record, it is evident that the learned counsel is seeking to pursue costs arising out of taxation, and thus has no other interest in the matter. This goes to counter the issue of locus standi as alleged by the 2nd respondent. In that case, has the applicant made out a case for grant of the orders sought? From the record, pursuant to the ruling by the taxing officer dated 4th July, 2022 the applicant herein was issued with a certificate of taxation on 17th July, 2024. There is no evidence of any order setting aside the certificate of taxation, and as such, it is final and conclusive to the amounts taxed. The certificate of taxation is also valid and there is no reason to deny the same.
13. This court finds merit in the originating summons dated 14th February, 2025 and it is hereby allowed in the following terms:-
 1. That judgment is entered for the firm of Muigai Kemei & Associates Advocates against the respondents for the sum of Kshs. 643, 470/- with interest at court rates from 17th July, 2024, until payment in full.
 2. The advocate is also awarded the costs of the instant application assessed at Kshs. 30,000/- only.Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 21ST DAY OF JULY, 2025.

HON. MBOGO C.G.

JUDGE

21/07/2025.



In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Odongo holding brief for Mr. Makau for the 1st Respondent

Ms. Mary Muigai for the Applicant – absent

