



**Kenya County Government Workers Union (Union Branch) & 2 others v Nairobi City County & 5 others; Commission & another (Interested Parties); Advocates (Intended Interested Party) (Cause E068 of 2022) [2025] KEELRC 654 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 654 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E068 OF 2022  
SC RUTTO, J  
FEBRUARY 28, 2025**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION (UNION BRANCH) ..... 1<sup>ST</sup> CLAIMANT  
KENYA COUNTY GOVERNMENT WORKERS UNION (STAFF BRANCH) ..... 2<sup>ND</sup> CLAIMANT  
KENYA COUNTY GOVERNMENT WORKERS UNION ..... 3<sup>RD</sup> CLAIMANT**

**AND**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT  
NAIROBI COUNTY PUBLIC SERVICE ..... 2<sup>ND</sup> RESPONDENT  
COUNTY SECRETARY, NAIROBI COUNTY ..... 3<sup>RD</sup> RESPONDENT  
MOHAMED SAHAL ..... 4<sup>TH</sup> RESPONDENT  
CONTROLLER OF BUDGET ..... 5<sup>TH</sup> RESPONDENT  
CENTRAL BANK OF KENYA ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY  
COMMISSION ON ADMINISTRATIVE JUSTICE ..... INTERESTED PARTY**

**AND**

**BERNARD ODERO OKELLO T/A ODERO AND PARTNERS  
ADVOCATES ..... INTENDED INTERESTED PARTY**



## RULING

1. What comes up for determination is the Notice of Motion dated 29<sup>th</sup> November 2024 brought forth by the 1<sup>st</sup> and 2<sup>nd</sup> Claimants/Applicants through which they seek the following orders;
  - a. That this Honourable Court do grant leave to the firm of Okatch And Partners Advocates to come on record for the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants (sic) in this matter in place of Odero And Partners Advocates.
  - b. That pursuant to the grant of prayer 2 above, this Honourable Court be pleased to deem that this application and the Notice of Preliminary Objection dated the 29<sup>th</sup> day of November, 2024 are duly filed and do proceed to give directions on disposal of the same.
  - c. That upon the hearing and determination of this application and the Preliminary Objection, this Honourable Court be pleased to strike out the Intended Interested Party's application.
  - d. That this Honourable Court do issue any other order that it may deem just and fit.
2. The Application is premised on the grounds set out on its face and is supported by the Affidavit sworn on 29<sup>th</sup> November 2024 by Calvince Otieno, who describes himself as a member of the 2<sup>nd</sup> Claimant.
3. Mr. Otieno deposes that on the 19<sup>th</sup> day of November 2024, the Intended Interested Party herein vide their advocates, Achieng Odero and Associates Advocates, filed an Application seeking to be joined as parties to this claim and for purposes of seeking ex parte injunctive reliefs restraining the disbursement of the decretal sum arising from the claim.
4. Mr. Otieno further avers that the Intended Interested Party was the Advocate acting for the Claimants in this matter and thus the gravamen of his application is against the interests of the Claimants.
5. It is Mr. Otieno's further deposition that owing to the apparent conflict between the 2<sup>nd</sup> and 3<sup>rd</sup> (sic) Claimants and the Intended Interested Party, the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants (sic) have instructed the firm of Okatch and Partners Advocates to take over the conduct of this matter from the Intended Interested Party.
6. Mr. Otieno further avers that he is advised by his Advocates that the provisions of Order 9 Rule 9 of the Civil Procedure Rules, 2010 make it mandatory that for any change of Advocates to be effected after judgment has been entered, there must be an order of the Court upon application with notice to all parties. It is on this basis that they have sought prayer 2 of the application herein.
7. That they have also instructed their Advocates to file a Notice of Preliminary Objection on the issue of jurisdiction.
8. Mr. Otieno further avers that he has been advised by his Advocates that the issues raised in the Application dated the 19<sup>th</sup> day of November 2024 can be dealt with through an Advocate/Client Bill of Costs and not through moving this Honourable Court (which is now functus officio) through the instant Application (sic).
9. It is Mr. Otieno's view that unless this Honourable Court intervenes and grants the orders sought, there will be an unwarranted delay in executing this Court's decree.



10. Save for the Intended Interested Party, who is also Counsel on record for the Claimants, the other parties did not oppose the Application. In this regard, Mr. Bernard Odero Okello opposed the Application through his Replying Affidavit sworn on 9<sup>th</sup> December 2024.
11. Mr. Okello avers that having had the conduct of this matter on behalf of the Claimants, he is fully conversant with the facts of this case and therefore competent to make the Affidavit.
12. Mr. Okello deposes that the judgment in this matter was entered on 16<sup>th</sup> October 2023 while a certificate of order against the Government was issued on 4<sup>th</sup> September 2024.
13. That his law firm not only received instructions to institute these proceedings on behalf of the Claimants but has also remained on record until after judgment was entered according to the decree dated 14<sup>th</sup> November 2023.
14. Mr. Okello further avers that through an application dated 19<sup>th</sup> November 2024, he has applied to be joined as an Interested Party limited for purposes of pursuing legal fees that the Claimants owe his firm of advocates.
15. According to Mr. Okello, the Applicant's contention that he ought to recover his fees through the filing of an Advocate-Client Bill of Costs is incorrect as his firm of advocates has a Fee Agreement dated 17<sup>th</sup> September 2023 with the Claimants and the Taxing Master would in the circumstances be bereft of jurisdiction.
16. He is also aware that his firm of advocates is in the process of instituting a civil claim in the High Court to enable the determination of the legal dispute as to the legal fees that is payable with finality.
17. Mr. Okello further avers that he verily believes that this Court has the jurisdiction to issue appropriate orders for the preservation of the balance of the decretal sum pending the resolution of the dispute on legal fees.
18. He is aware that neither the Respondents nor the Claimants have denied that the 1<sup>st</sup> Respondent has directly remitted to the Claimants a sum in excess of Kshs. 600 million in part settlement of the decretal sum without the involvement or knowledge of his firm of advocates that is on record for the decree-holders.
19. It is Mr. Okello's further deposition that the Claimants consist of a membership in excess of 6000 persons whose whereabouts and means are not known to him.
20. That the filing of his application dated 19<sup>th</sup> November 2024 was necessitated by the fact that despite his firm of advocates diligently, professionally and zealously prosecuting the instant suit against the 1<sup>st</sup> Respondent leading to the issuance of a decree and certificate of costs against the Government for Kshs. 1,017,556,303.67, the Claimants colluded with the 1<sup>st</sup> Respondent to deprive him of the agreed legal fees of Kshs. 150,000,000.00 as contained in the Fee Agreement dated 17<sup>th</sup> September, 2023 through partial payment of a substantial judgment sum to the Claimants directly without the knowledge or involvement of his law firm.
21. According to Mr. Okello, the Claimants in cahoots with the 1<sup>st</sup> Respondent in further pursuit of their nefarious scheme, have purported to appoint one of the advocates that handles the matters for the 1<sup>st</sup> Respondent/Judgment-Debtor, Okatch & Partners Advocates, to come on record for the Claimants/Decree Holders so that he can receive payment on their behalf and defeat the rights and obligations under the Fee Agreement dated 17<sup>th</sup> September 2023.



22. He has been advised by his advocates on record, which advise he verily believes to be correct, that where a Judgment/Debtor is colluding with the Decree/Holder to deprive an Advocate of his legal fees, the Advocate is entitled to be joined in the proceedings as an Interested Party for purposes of preserving legal fees and the Court is in such cases enjoined to issue appropriate orders for preservation of the decretal sum until the dispute as to the legal fees is determined.
23. He is further advised by his Advocates on record and he verily believes to be correct that the Court has the jurisdiction post-judgment to issue an order for the preservation of Kshs.150 million, being the agreed legal fees payable to his firm of Advocates according to the Fee Agreement dated 17<sup>th</sup> September 2023.

### **Submissions**

24. The Application was canvassed by way of written submissions. Both parties filed written submissions and the Court has given due consideration to the said submissions.

### **Analysis and Determination**

25. To my mind, the singular issue for determination at this juncture is whether the court should allow the instant Application, thereby granting leave to the firm of Okatch and Partners to come on record for the 1<sup>st</sup> and 2<sup>nd</sup> Claimants/Applicants in the place of Odero and Partners Advocates.
26. It is evident that the instant Application was triggered by the Application of the Intended Interested Party dated 19<sup>th</sup> November 2024 in which they seek inter alia, an order restraining the 1<sup>st</sup> Respondent from directly paying the Claimants or any third parties to the order of the Claimants any sum or balance of sums arising from the final award in Nairobi ELRC Cause No. E068 of 2022; Kenya County Government Workers Union (Nairobi branch) and 2 others vs Nairobi City County and 7 others.
27. According to the Applicants herein, the gravamen of the Application by the Intended Interested Party is against their interests and that they run a risk of not being represented in the prosecution of the Application by the Intended Interested Party.
28. Opposing the instant Application, Mr. Odero has averred that his firm received instructions to institute these proceedings on behalf of the Claimants and has remained on record until after judgment was entered.
29. According to Mr. Odero, they have a Fee Agreement with the Claimants dated 17<sup>th</sup> September 2023 and the Taxing Master would in the circumstances be bereft of jurisdiction. He has further averred that the Claimants consist of membership in excess of 6,000 persons whose whereabouts and means are unknown to him.
30. Mr. Odero has further contended that the Claimants in cahoots with the 1<sup>st</sup> Respondent have purported to appoint the firm of Okatch and Partners to come on record for the Claimants/Decree holders so that he can receive payment on their behalf and defeat the rights and obligations under the Fee Agreement dated 17<sup>th</sup> September 2023.
31. In support of his position, Mr. Odero annexed to his Replying Affidavit a copy of a Fee Agreement dated 17<sup>th</sup> September 2023 which states in part; “It is mutually agreed that the fees payable to the Advocate is One Hundred and Fifty Million Kenya shillings (Kshs 150,00,000.00) only”.
32. Order 9 Rule 9 of the Civil Procedure Rules, 2010 pursuant to which the instant Application has been brought, provides that change of advocate can only be effected by an order of court or consent of parties. It provides thus;



[9](9) When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

33. In the case of *Connection Joint v Apollo Insurance* [2006] KEHC 3281 (KLR) the Court in addressing the mischief intended to be cured under Order 9 Rule 9 aforementioned, reckoned as follows;

“...Furthermore, it may be recalled that the mischief which was targeted by the introduction of that rule, was the replacement of advocates who had worked hard to enable a case get to the stage of judgment. In my understanding, some unscrupulous persons used to either appoint new advocates or take over the personal conduct of cases, as soon as judgment had been granted in their favour. Thereafter, the advocates who had been replaced were left chasing after their legal fees, which was not fair to them, especially when the said advocates only learnt about their own replacements, after the same had taken effect. By making it mandatory for the party who seeks to replace his advocate, after judgment was passed, to apply to the court, with notice to his said advocate, the rules committee addressed two concerns. First, it was no longer possible for the advocate to be taken by surprise, by his ouster, as he had to be served with the application seeking to remove him from record: secondly, the fact that the court had the opportunity of giving due consideration to the reasons for and against the application, implied that the court was able, if necessary, to impose terms and conditions. For instance, if it transpired that the advocate's fees had not yet been paid, the court could impose appropriate conditions to the order enabling the party to either act in person or alternatively, to engage another advocate...”

34. The Court adopted a similar position in the case of *Nyeri Motor Services Ltd v Kanuti & 2 others (Miscellaneous Application 25 of 2023)* [2023] KEHC 17734 (KLR) (18 May 2023) (Ruling) and opined that Order Rule 9 Rule 9 of the Civil Procedure Rules was introduced to protect advocates who are retained by a client until the tail end of a case and sack them immediately judgement is delivered with a view to reaping the fruits of labour in total disregard of the labourer who is the advocate that conducted the trial.

35. The Court entirely concurs with the sentiments expressed in the above judicial precedents.

36. As can be gleaned from the Replying Affidavit of Mr. Odero, it is apparent that the bone of contention in this case, is the payment of advocates' fees.

37. It is also noteworthy that the Applicants herein have not indicated, let alone suggested that the advocates' fees have been settled partially or in full.

38. The Court is also cognizant of the rights of a litigant to legal representation of their own choice.

39. In the circumstances, and to balance the rights and interests of the Applicants and the Intended Interested Party (Counsel on record for the Claimants), the order that commends itself to this Court is to allow the Application dated 29<sup>th</sup> November 2024 in terms of order 1, thereby granting leave to the firm of Okatch and Partners to come on record for the 1<sup>st</sup> and 2<sup>nd</sup> Claimants/Applicants in this matter in the place of Odero and Partners, on condition that the said Claimants deposit the sum of Kshs 150



million (appearing in the Fee Agreement dated 17<sup>th</sup> September 2023) in Court pending resolution of the dispute with respect to advocates fees.

40. In view of the order above, it follows that the Court will only determine the Notice of Preliminary Objection dated 29<sup>th</sup> November 2024 filed by the firm of Okatch and Partners upon the said firm being properly placed on record.
41. There will be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Odero for the Claimants

Mr. Otieno for the 1<sup>st</sup> Respondent

Ms. Aniela instructed by Mr. Okatch (intending to come on record for the 1<sup>st</sup> and 2<sup>nd</sup> Claimants/Applicants)

Ms. Somba instructed by Mr. Okatch (intending to come on record for the 3<sup>rd</sup> Claimant)

Mr. Rapando for the Intended Interested Party

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

