



**Mutisya v Cortec Systems & Solutions (Petition 93 of 2020)
[2025] KEELRC 1403 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1403 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 93 OF 2020
CN BAARI, J
MAY 15, 2025**

BETWEEN

NANCY MBITHE MUTISYA PETITIONER

AND

CORTEC SYSTEMS & SOLUTIONS RESPONDENT

RULING

1. By a Notice of Motion dated 3rd February, 2025, brought pursuant to Order 2 Rule 15 (b), (c), (d), Order 9 rule 9, Order 51 Rule 1 of the Civil Procedure Rules, Sections 3A and 63 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya, Section 27, 39 and 40 of the Advocates Act, the Applicant seeks the following orders: -
 - i. That this Honorable Court be pleased to strike out, quash and/or dismiss the Petitioner's Party and Party Bill of costs dated 29th November, 2024 as the firm of Mokua Ndubi & Co. Advocates are strangers to the current proceedings and the bill herein, should be struck out.
 - ii. That this Honorable Court be pleased to strike out, quash and/or dismiss the Petitioner's Party and Party Bill of costs dated 29th November, 2024 as the same is misconceived, incompetent filed contrary to the Advocates Act, and is otherwise an abuse of the due process of the court.
 - iii. That this Honorable Court be pleased to strike out, quash and/or dismiss the Petitioner's Party and Party Bill of costs dated 29th November, 2024 as the same is defective for want of compliance with schedule 6 of the Advocates remuneration Order (2014) and the bill as drawn further offends Rule 69 of the Advocates (Remuneration Order).
 - iv. That the costs of this application be awarded to the Applicant
2. The application is supported by the grounds on the face of the Motion and the affidavit of Agnes J. Kipsuto sworn on 3rd February, 2025.



3. The Applicant contends that The Petition herein was filed on the 5th May, 2020 by the firm of Musyoki Mogaka & Co. Advocates. It states that the said firm of Advocates prosecuted the matter up to its determination, and Judgment was entered on the 17th June, 2021.
4. The Applicant avers further that their Advocates filed an application dated the 29th June, 2021 for review of the Judgment and exchanged pleading with the firm of Musyoki Mogaka & Co. Advocates, and that the said firm of Advocates further obtained a decree and served the same upon the Respondent/Applicant's Advocate.
5. It states that the bill of costs in the matter, was filed by the firm of Mokuia Ndubi & Co. Advocates, who are strangers to the current proceedings as judgment was already obtained, and cannot purport to have filed the said bill of costs without first obtaining the leave of court.
6. It states further that there is no evidence presented that the said Petitioner instructed them to be on record previously or that there was any consent obtained after judgment from the previous Advocates.
7. It avers that the appearance by the firm of Mokuia Ndubi & Co. Advocates offends the mandatory provisions of Order 9 Rule 9 of the Civil Procedure Rules, and cannot purport to file anything in the current proceedings without first obtaining leave of court.
8. It is the Applicant's assertion that the current bill of costs is fatally defective for want of compliance and form, and should be struck out as it contravenes the law for reason that the mandatory requirements as set out in Rule 69(1) of the Advocates remuneration order have been willfully and intentionally flouted by the Petitioner.
9. That it is clear on the face of it, that the Bill of Cost presented by the Petitioner is not drawn in compliance with the aforementioned provisions, and that willful flouting of the most basic requirements of the law should not be tolerated by this Honourable Court, and as such, the Bill of Cost should be struck out.
10. The Applicant avers that it is only fair, just and proper that the purported bill of costs be struck out with costs to the Respondent/Applicant.
11. The Petitioner/Respondent opposed the motion vide a replying affidavit that she swore on 14th February, 2025. She avers that she instructed the firm of Mokuia Ndubi & Co. Advocates on 5th February 2024, and for reason that judgment had been entered in the matter, a consent between the outgoing firm of Advocates (M/S Musyoki Mogaka & Co. Advocates) and the incoming firm (M/S Mokuia Ndubi & Co. Advocates) was duly filed and served upon the Respondent/Applicant on 5th February 2025.
12. It is her position that having instructed the firm of M/S Musyoki Mogaka & Co. Advocates and M/S Mokuia Ndubi & Co. Advocates, and having been awarded costs in the main petition, she is entitled to instruction fees, being costs awarded to the successful litigant, in this case herself, and not to a firm of Advocates.
13. The Petitioner/Respondent avers that her Party and Party Bill of Costs strictly complies with the mandatory requirements set out in Rule 69(1) of the Advocates Remuneration Order.
14. She states that the fees for attending taxation has not been included in the body of the bill, but the item appears at the end, and the amount has been left blank for completion by the taxing officer as required by the provisions of 69(3) of the Advocates Remuneration Order.
15. The Petitioner prays that the Applicant's motion be dismissed with costs.



16. The parties' submissions on the motion have been duly considered.

Determination

17. The two issues for determination are: -

- i. Whether the firm of Mokua Ndubi & Co. Advocates is properly on record.
- ii. Whether the Petitioner's Party and Party bill of costs is defective.

18. On the first issue, the Applicant's position is that the firm of Mokua Ndubi & Co. Advocates is not properly on record and is a stranger to this proceedings. It avers further that from the time the petition was filed in the year 2020, until its determination in June, 2021, the firm of Musyoki Mogaka & Co. Advocates acted for the Petitioner.

19. The Applicant avers further that their Advocates filed an application dated the 29th June, 2021 for review of the Judgment and exchanged pleading with the firm of Musyoki Mogaka & Co. Advocates, and that the said firm of Advocates further obtained a decree and served the same upon the Respondent/Applicant's Advocate.

20. On her part, the Petitioner states that she instructed the firm of Mokua Ndubi & Co. Advocates on 5th February 2024, and for reason that judgment had been entered in the matter, a consent between the outgoing firm of Advocates (M/S Musyoki Mogaka & Co. Advocates) and the incoming firm (M/S Mokua Ndubi & Co. Advocates) was duly filed and served upon the Respondent/Applicant on 5th February 2025.

21. In determining whether the firm of Mokua Ndubi & Co. Advocates is properly on record, the Court is alive to the fact that at the time this firm is said to have come on record, judgment had already been entered in the matter, and a decree extracted by the firm of Musyoki Mogaka & Co. Advocates.

22. The Petitioner has placed before court a consent said to have been entered between the firms of Mokua Ndubi & Co. Advocates as the Petitioner's incoming advocates, and Musyoki Mogaka & Co. Advocates as the outgoing firm dated 5th February, 2025. The Respondent/Applicant's motion is dated 3rd February, 2025, which is confirmation that indeed, as at the time the Party and Party bill of costs was filed, the consent had not been entered.

23. The requirement to seek leave to come on record after judgment has been entered, is aimed at protecting the outgoing firm of advocates. Ideally, if the outgoing firm of Advocates consents to the coming on record of a new firm, the court can rightly assume that the said firm will not suffer prejudice and will ordinarily allow the change of advocates.

24. It is evident that the consent placed before this court has not been adopted as order of the court. It is also clear that the same was filed three days after the bill of costs subject of the instant motion was filed. Further, the firm of Musyoki Mogaka & Co. Advocates have not filed any affidavit indicating that they have consented to the firm of Mokua Ndubi & Co. Advocates coming on record post judgment.

25. In light of the foregoing, my conclusion is that nothing shows that the firm of Mokua Ndubi & Co. Advocates obtained leave to come on record in this matter having purported to have come onboard after judgment was entered, and are, as correctly submitted by the Respondent/Applicant, strangers to this proceeding, and so I hold.

26. On the issue of form, I return that I would be slow to dismiss a Bill of Costs for reason of the form in which it has been drawn. Suffice it to say that a bill of costs, except where it is brought to this court in



form of a reference, is purely a mandate of the Taxing Master (DR) and not this court, and this court will be overstepping by entering into that realm.

27. I will therefore proceed to strike out the Petitioner's Party and Party Bill of Costs on the premise only that it was lodged by a stranger to the proceedings.
28. In the end, the Petitioner's Party and Party Bill of costs dated 29th November, 2024, be and is hereby struck out.
29. The Petitioner/Respondent shall bear the costs of the motion.
30. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 15TH DAY OF MAY, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Mokuia present for the Petitioner

Mr. Kamande h/b for Mr. Agwara for the Respondent

Ms. Esther – C/A

