



**National Bank of Kenya v Swanya Limited & another (Miscellaneous Application 022 of 2023) [2025] KEHC 4061 (KLR) (Commercial and Tax) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4061 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION 022 OF 2023**

**F GIKONYO, J  
MARCH 27, 2025**

**BETWEEN**

**NATIONAL BANK OF KENYA ..... APPLICANT**

**AND**

**SWANYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SEED GROUP LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is the Notice of Motion dated 6<sup>th</sup> February 2023 seeking entry of judgment for Kshs. 4,215,035/- in terms of the certificate of taxation issued on 15<sup>th</sup> December 2022.
2. The motion is expressed to be brought under Sections 1A and 1B of the *Civil Procedure Act*, Order 11 Rule 3(h) of the Civil Procedure Rules and Section 51(2) of the *Advocates Act*.
3. The grounds for the application are set out in the motion as well as the supporting affidavit sworn by Advocate Eric Kaburu.
4. It was deposed that the court taxed the applicant's party and party bill of costs dated 18<sup>th</sup> July 2022 in its favour and issued the subject certificate of costs. It was also deposed that the retainer is not contested nor a reference filed against the taxation ruling.
5. The applicant filed written submissions dated 5<sup>th</sup> February 2025. It relied on Section 51(2) of the *Advocates Act* to argue the grounds in support of the application. More specifically, that the certificate of costs has not been set aside or varied. Thus, the advocate is entitled to judgment on the sum certified due by the taxing officer.



## Response

6. In opposing the motion, the respondents filed a replying affidavit sworn by their director, Victor S. Ogeto on 28<sup>th</sup> January 2025. Mr. Ogeto deposed that the respondents were represented by Mutubwa & Co. Advocates in ELC 198 of 2020. He also deposed that they were unaware of the conclusion and outcome of the case and the subsequent taxation proceedings leading to the present application.
7. Mr. Ogeto noted that the certificate of costs annexed to the supporting affidavit as “EK1” was served upon Mutubwa & Co. Advocates on 24<sup>th</sup> January 2023. He, however, maintained that, it was not brought to the respondents’ attention.
8. the respondent took a swipe at the recital of the impugned certificate; ELC No. 198 of 2020. Yet, the taxation proceedings were taken out as miscellaneous; a serious breach of procedure.
9. The respondent explained further that; a taxation matter is a complete distinct suit for which a party must be served and be given separate instructions.
10. Mr. Ogeto further asserted that the suit underlying the motion was pending before the Environment and Land Court, which exercises a distinct and separate jurisdiction from this court. Consequently, he contended that the motion ought to have been filed before the same court to allow the perusal of the relevant file and ascertain the exact position.
11. Mr. Ogeto claimed that this court has no jurisdiction to entertain the application. In the same breath, he urged the court to grant the respondents the opportunity to file a reference out of time for hearing on merits.

## Analysis and Determination

12. There are three substantive issues raised in the matter:-
  1. Whether this court has jurisdiction
  2. Whether judgment should be entered in terms of the certificate of costs.
  3. Whether the time should be enlarged to allow the respondents to file a reference application against the taxation ruling.

## Jurisdiction

13. A preliminary question has been raised; whether this court has the jurisdiction to consider the motion.
14. Jurisdiction is everything; it is sine qua non adjudication of any dispute by the court. Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR and S.K. Macharia case.
15. This matter was transferred from the Environment and Land Court (ELC) to this court on 19<sup>th</sup> September 2023 by Justice A. Omollo because ‘it was filed in the wrong court’.
16. The certificate of costs dated 2<sup>nd</sup> December 2022 is issued by the Deputy Registrar, Environment and Land Court, Milimani in ELC E198 of 2020. The certificate emanated from party and party bill of costs dated 18<sup>th</sup> July 2022.
17. The trial court has the powers to award costs in matters that it has jurisdiction. In this case, under Section 13 (5) (h) of the *Environment and Land Court Act*.



18. The arguments by the respondent make sense as Party and Party costs are assessed and or taxed within the primary suit in which the dispute was determined. Ogolla v *Onyango Otunga & Company Advocates (Civil Appeal E101 of 2023)* [2023] KEHC 27214 (KLR) (27 December 2023) (Ruling)
19. The trial court is ELC which exercised jurisdiction under Section 13 (5) (h) of the *Environment and Land Court Act*. The procedure to be followed is under part III of the Advocates (Remuneration) Order.
20. Accordingly, ELC has jurisdiction to adjudicate over this application which seeks for judgment upon a certificate of costs on a party and party bill of costs arising from costs awarded in the primary ELC suit.
21. But before I close, some important questions arose out of the respondent's submissions portending; the difference between party and party costs and advocate-client costs; the applicable procedure for execution; and the requirement for judgment on the certificate of costs. These are for another day, nonetheless.

### **Disposal**

22. In consequence thereof, this matter be placed before the PJ, ELC for directions.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

Abok for Applicant

Kuria for Respondent

CA - Godfrey

