



**Advocates v Mathenge & another (Miscellaneous Application  
E224 of 2023) [2025] KEHC 5306 (KLR) (Family) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5306 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**MISCELLANEOUS APPLICATION E224 OF 2023**

**HK CHEMITEI, J**

**APRIL 30, 2025**

**IN THE MATTER OF SUCCESSION CAUSE NO. 1239 OF  
2008 IN THE ESTATE OF JAMES KANYOTU (DECEASED)**

**AND**

**IN THE MATTER OF SECTION 45 OF THE ADVOCATES ACT CAP 16**

**BETWEEN**

**WAHOME AND AKEDI ADVOCATES ..... APPLICANT**

**AND**

**MERCY MUMBI MATHENGE ..... 1<sup>ST</sup> RESPONDENT**

**CLINT MATHENGE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In its application dated 19<sup>th</sup> October 2023 the Applicant seeks orders that:-
  - (a) Judgement be entered in favour of the Applicant to receive 10% of the value of assets distributed and to be distributed to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from the estate of James Kanyotu (deceased) in Succession Cause No. 1239 of 2008 as beneficiaries of the estate.
  - (b) The 1<sup>st</sup> and 2<sup>nd</sup> Respondents bear the costs of the application.
2. The application is based on the affidavits of Wangechi Akedi dated 19<sup>th</sup> October 2023 and 26<sup>th</sup> February 2024 respectively.
3. The Respondents through the 1<sup>st</sup> Respondent's affidavit sworn on 14<sup>th</sup> December 2023 and 27<sup>th</sup> March 2024 have opposed the application.



4. The parties have also filed their respective submissions which the court has perused extensively together with the cited authorities.
5. The issue between the parties are essentially a client and advocates relationship. From the averments contained in the rival affidavits the applicant acted for the Respondents in the estate of the late James Kanyotu under Succession Cause No. 1239 of 2008 pending before this court.
6. In between they seemed to have agreed on some fees which was to be deducted from the Respondents' entitlement in the said estate. The same was up to 10% of the value of what the Respondents would get from the said estate. They entered into some handwritten agreement dated 7<sup>th</sup> August 2019.
7. The Respondents have disputed the same arguing that it was a forgery and was instigated by their suit at the advocates disciplinary proceedings against the Applicant. They denied such an agreement averring further that that was not possible as the 2<sup>nd</sup> Respondent who was a minor was not in a position to enter into any agreement.
8. The Respondent argued and submitted that the application ought to have been filed within the succession matter and not under this miscellaneous file.
9. I have anxiously looked at the entire application and I find the above argument by the Respondent valid for several reasons. The said reasons will not touch on the validity of the client/advocate agreement mentioned above but simply on the procedure.
10. In the first instance the agreement is vehemently disputed and allegations of forgery has been made. In as much as Section 45 of the Advocates Act permits such an agreement, in the event of any dispute it calls for adduction of evidence to corroborate or otherwise deny the same. That cannot be undertaken in a Miscellaneous Cause. Even if I were to deal with the application exhaustively, I doubt if I would have arrived at some meaningful conclusion in light of the Respondent's opposition to the agreement and in particular the forgery allegations they claimed.
11. More significantly, there is no evidence that the Respondents have been awarded the 10% from the Kanyotu estate. That therefore means that if the court was to agree with the Applicant it will be doing so under some speculation which is not lawfully permitted.
12. To buttress this there is no taxed bill between the parties or certificate of costs for that matter.
13. The best place therefore to ventilate and where the court could as well issue further directions on the authenticity of the agreement would be in the Succession Cause. That cause will give the parties the latitude and liberty to prove the issues which are very germane raised in the rival affidavits herein.
14. In the premises I do not find this cause for now meritorious. It would have been different if at all there was a certificate of costs and the Applicant asking for it to be enforced against the Respondents.
15. The application is otherwise dismissed with costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**H K CHEMITEI**  
**JUDGE**

