



**Gicheru & Company Advocates v Africa Merhant Assurance Company Limited (Civil Miscellaneous Application 1, 2 to 45, 48 to 52 & 56 of 2019 (Consolidated)) [2025] KEHC 9259 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9259 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CIVIL MISCELLANEOUS APPLICATION 1, 2 TO  
45, 48 TO 52 & 56 OF 2019 (CONSOLIDATED)**

**GL NZIOKA, J**

**JUNE 27, 2025**

**BETWEEN**

**GICHERU & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**AFRICA MERHANT ASSURANCE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated 23<sup>rd</sup> May, 2025, brought under the provisions of; section 51(2) of the *Advocates Act* (Cap 16) Laws of Kenya, section 1A, 1B, and 3A of the *Civil Procedure Act*, (Cap 21) Laws of Kenya and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the law, the applicant is seeking for the following orders:
  - a. That the Honourable Court be pleased to consolidate following matter with *Miscellaneous Civil Application No.1 of 2019* as the lead file:
    - i. *High Court Misc. Application No. 1 of 2019* taxed at Ksh130,596/=.
    - ii. *High Court Misc. Application No. 2 of 2019* taxed at Ksh167,802/=
    - iii. *High Court Misc. Application No. 3 of 2019* taxed at Ksh68,492/=
    - iv. *High Court Misc. Application No. 4 of 2019* taxed at Ksh68,492/=
    - v. *High Court Misc. Application No. 5 of 2019* taxed at Ksh65,210/=
    - vi. *High Court Misc. Application No. 6 of 2019* taxed at Ksh65,210/=
    - vii. *High Court Misc. Application No. 7 of 2019* taxed at Ksh62,794



- viii. *High Court Misc. Application No. 8 of 2019* taxed at Ksh66,738/=
- ix. *High Court Misc. Application No. 9 of 2019* taxed at Ksh89,817/=
- x. *High Court Misc. Application No. 10 of 2019* taxed at Ksh67,080/=
- xi. *High Court Misc. Application No. 11 of 2019* taxed at Ksh62,803/=
- xii. *High Court Misc. Application No. 12 of 2019* taxed at Ksh63,026/-
- xiii. *High Court Misc. Application No. 13 of 2019* taxed at Ksh65,429/=
- xiv. *High Court Misc. Application No. 14 of 2019* taxed at Ksh87,908/=
- xv. *High Court Misc. Application No. 15 of 2019* taxed at Ksh55,370/=
- xvi. *High Court Misc. Application No. 16 of 2019* taxed at Ksh55,834/=
- xvii. *High Court Misc. Application No. 17 of 2019* taxed at Ksh63,879/=.
- xviii. *High Court Misc. Application No. 18 of 2019* taxed at Ksh62,719/=
- xix. *High Court Misc. Application No. 19 of 2019* taxed at Ksh63,879/=
- xx. *High Court Misc. Application No. 20 of 2019* taxed at Ksh63,876/=
- xxi. *High Court Misc. Application No. 21 of 2019* taxed at Ksh63,879/=
- xxii. *High Court Misc. Application No. 22 of 2019* taxed at Ksh62,081/=
- xxiii. *High Court Misc. Application No. 23 of 2019* taxed at Ksh102,347=
- xxiv. *High Court Misc. Application No. 24 of 2019* taxed at Ksh61,599/=
- xxv. *High Court Misc. Application No. 25 of 2019* taxed at Ksh61,599/=
- xxvi. *High Court Misc. Application No. 26 of 2019* taxed at Ksh48,219/=
- xxvii. *High Court Misc. Application No. 27 of 2019* taxed at Ksh63,090/=
- xxviii. *High Court Misc. Application No. 28 of 2019* taxed at Ksh63,338/=
- xxix. *High Court Misc. Application No. 29 of 2019* taxed at Ksh63,090=
- xxx. *High Court Misc. Application No. 30 of 2019* taxed at Ksh47,560/=
- xxxi. *High Court Misc. Application No. 31 of 2019* taxed at Ksh63,090/=
- xxxii. *High Court Misc. Application No. 32 of 2019* taxed at Ksh67,962/=
- xxxiii. *High Court Misc. Application No. 33 of 2019* taxed at Ksh64,714/=
- xxxiv. *High Court Misc. Application No. 34 of 2019* taxed at Ksh46,966=
- xxxv. *High Court Misc. Application No. 35 of 2019* taxed at Ksh65,578/=
- xxxvi. *High Court Misc. Application No. 36 of 2019* taxed at Ksh67,202/=
- xxxvii. *High Court Misc. Application No. 37 of 2019* taxed at Ksh47,830/=
- xxxviii. *High Court Misc. Application No. 38 of 2019* taxed at Ksh73,750/=



- xxxix. *High Court Misc. Application No. 39 of 2019* taxed at Ksh114,362/=
  - xl. *High Court Misc. Application No. 40 of 2019* taxed at Ksh64,714/=
  - xli. *High Court Misc. Application No. 41 of 2019* taxed at Ksh44,317/=
  - xlii. *High Court Misc. Application No. 42 of 2019* taxed at Ksh46,670/=
  - xliii. *High Court Misc. Application No. 43 of 2019* taxed at Ksh34,714/=
  - xliv. *High Court Misc. Application No. 44 of 2019* taxed at Ksh94,997/=
  - xlv. *High Court Misc. Application No. 45 of 2019* taxed at Ksh61,634/=
  - xlvi. *High Court Misc. Application No. 48 of 2019* taxed at Ksh67,710/=
  - xlvii. *High Misc. Application No. 49 of 2019* taxed at Ksh61,866/=
  - xlviii. *High Court Misc. Application No. 50 of 2019* taxed at Ksh83,838/=
  - xlix. *High Court Misc Application No. 51 of 2019* taxed at Ksh57,970/=
  - l. *High Court Misc. Application No. 52 of 2019* taxed at Ksh44,425=
  - li. *High Court Misc. Application No. 56 of 2019* taxed at Ksh71,353/=
- b. That pursuant to prayer (a) above, the Honourable court be pleased to issue a decree for Ksh 3,479,418/- (Kenya Shillings Three million, four hundred and seventy-nine thousand, four hundred and eighteen) being the total taxed sum of all the matters.
  - c. That interest on prayer (b) above be provided for at 14% per annum from 11<sup>th</sup> January, 2019, until payment in full.
  - d. That the cost of the Application be provided for.
2. The application is based on the grounds thereto and an affidavit of Robert Ondieki an Advocate of the High Court of Kenya practicing in the applicant's firm. He avers that the applicant's bill of costs in the above listed matters have been taxed in the total taxed sum of Ksh 3,479,418/=.
  3. Consequently, the certificates of taxation were drawn, signed and issued as far as the year 2019. However, the respondent has not filed a reference to any of the bill of costs neither does it dispute the fees, but has continually neglected and/or failed to pay the legal fees duly earned despite demand.
  4. That an Advocate is legally entitled to fees duly earned in the course of service in line with the Advocate's Remuneration order, but as the respondent is facing a liquidity crisis, the recovery of funds herein is in jeopardy. Therefore, it is in the interest of justice the orders sought be granted.
  5. However, the application was opposed vide grounds of opposition dated 31<sup>st</sup> July, 2024, which state as follow:
    - a. That the application is misconceived, bad in law, incompetent and otherwise an abuse of the court process.
    - b. That the applicant is a sole proprietorship registered under the [Registration of Business Names Act](#) Cap 499.
    - c. That the applicant is not a legal entity and devoid of any capacity to sue and be sued in its own name.



- d. That the applicant cannot file any suit or be sued in any capacity.
  - e. That the applicant cannot move this court in its own capacity.
  - f. That Paul Gicheru Advocate who was the sole proprietor of M/s Gicheru & Company Advocates is now deceased as per the Law Society Advocates search engine.
  - g. That upon the demise of Paul Gicheru the sole proprietorship ceased to exist in its entirety.
  - h. That Robert Ondieki Advocate has no capacity to sign any document on behalf of M/s Gicheru & Company Advocates at it ceased to exist as a business upon the demise of Paul Gicheru Advocate.
  - i. That Robert Ondieki Advocate is only entitled to practice under his own name as prescribed by the law.
  - j. That Robert Ondieki Advocate has not filed any evidence to indicate his relationship with the firm M/s Gicheru & Company Advocates.
  - k. That there is no prejudice suffered by the applicant if this application is dismissed.
  - l. That the application herein against the respondent be struck out and wholly dismissed as the applicant lacks.
6. The applicant filed a further affidavit dated 2<sup>nd</sup> August 2024 and averred that Mr Paul Gicheru was the sole proprietor of Gicheru & Co. Advocates but met his untimely death on 26<sup>th</sup> September 2022. That prior to his death the deponent was an associate in his law firm and had conduct of the instant matter and the other matters sought to be consolidated at the point of taxing the various Advocate-client bill of costs.
  7. That the late Paul Gicheru had sought his consent in his lifetime to manage his practice in the event he was unable to practice for whatever reason and he agreed. That he was notified by the Law Society of Kenya of his nomination as the appointed Advocate to take over management/administration and winding up of Ms Gicheru & Company Advocates in the event of the demise of Mr Paul Gicheru in relation to his law practice.
  8. That pursuant to Rule 14 of the *Law Society of Kenya (General) Regulations, 2020*, he is the duly nominated Advocate empowered to administer the law firm and wind it up. That the said rule sets out the circumstances under which a law firm is administered in the event of the death of its proprietor.
  9. That the respondent/client has always been aware of his appointment as the administrator of the firm of Gicheru & Company Advocates as evidenced by various attached communication. That it is therefore pretentious of the respondent to instruct its Advocate on record to challenge his locus standi in an attempt to wiggle out of paying owed legal fees.
  10. Further the respondent's grounds of opposition are defective as they are not supported by any provisions of law, unsubstantiated, frivolous and an abuse of court process meant to delay the matter and prevent him from carrying out his legal mandate.
  11. Furthermore, the grounds of opposition are basically general averment and raise issues of fact which in no way respond to the issues in his supporting affidavit and there is no law where grounds of opposition are supported by a list of documents as done by the respondents.



12. In a further supplementary affidavit, the applicant averred that it intentionally omitted the following below series of files from its application for consolidation as the same were dismissed for want of prosecution. The omitted series of files are as below: -
  - a. *High Court Misc. Application No. 46 of 2019*
  - b. *High Court Misc Application No. 47 of 2019*
  - c. *High Court Misc Application No. 53 of 2019*
  - d. *High Court Misc Application No. 54 of 2019*
  - e. *High Court Misc Application No. 55 of 2019*
13. That the applicant shall move the court appropriately for the reinstatement of the above dismissed series of files through the requisite application.
14. That in regard to prayer 2(b) of the application, the applicant erroneously stated the taxed amount for *Miscellaneous Application No. 2 of 2019* as Kshs 167,802 instead of Kshs 142, 043.
15. That in view of the erroneous amount of *Miscellaneous Application No. 2 of 2019* stated as Kshs 167,802 instead of Kshs 142,043 the applicant arrived at a wrong total for the consolidated matters being Kshs 3,479,418, and pray that the taxed amount under prayer 2(b) be rectified to read Kshs 142,043 and that the total taxed sum for all matters sought for consolidation under prayer (3) be rectified to read Kshs 3,453,659.
16. At the conclusion of arguments by the parties I find that the only ground raised by the respondent in opposing the application is that the applicant has no locus standi to institute the same.
17. However, annexed to the further affidavit filed by the applicant is a letter dated 17<sup>th</sup> October, 2022 wherein the Law Society of Kenya confirms that Gicheru Paul Advocate nominated the Birundu Robert Ondieki to manage the affairs of the firm if he was unable to practice for whatever reason. Based on that letter, the grounds of opposition fail.
18. Consequently, there is no opposition to the application. The certificates of taxation herein are not disputed, have not been varied and/or set aside and neither is the retainer in dispute. I therefore enter judgments in favour of the applicant in the sum of Kshs 3, 453, 659.
19. The interest on the sum awarded will accrue from 10<sup>th</sup> November, 2022 based on the letter of demand.
20. It is so ordered

**DATED, DELIVERED AND SIGNED ON THIS 27<sup>TH</sup> DAY OF JUNE, 2025**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Mr Ondieki for the Applicant

No appearance for the Respondent

Hannah: Court Assistant.

