



REPUBLIC OF KENYA



**Kimani Mwangi Advocates Llp v Malik (Commercial Miscellaneous
Application E023 of 2025) [2025] KEHC 12340 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL MISCELLANEOUS APPLICATION E023 OF 2025**

F WANGARI, J

JULY 31, 2025

BETWEEN

KIMANI MWANGI ADVOCATES LLP APPLICANT

AND

SAJID JAMSHED MALIK RESPONDENT

RULING

1. By a Notice of Motion application dated 27/01/2025 brought under the provisions of Section 51 (2) of the *Advocates Act*, Order 51 Rule 1 and 3 of the Civil Procedure Rules, and all other enabling laws.
2. In summary, the Applicant seeks for orders;
 - a. that this court be pleased to enter judgment for the Applicant against the Respondent for a sum of Kshs. 2,455,946/- as per the Certificate of Taxation dated 20/01/2025 and a Decree be issued to that effect.
 - b. that this court be pleased to issue an order that interest on the said Kshs. 2,455,946/- shall accrue at the court's rates of 14% with effect from the date of taxation, to wit 13/06/2024 until payment in full.
 - c. costs of this application be provided for.
3. The application is based on the grounds therein and the Supporting Affidavit dated 27/01/2025 that the Taxing Officer has issued a Certificate of Taxation in favour of the Applicant against the Respondent for the sum of Kshs. 2,455,946/- being the taxed Advocate/Client Bill of Costs. That the Respondent has failed to pay the Applicant the said amount to date, and that there are no outstanding issues left to determine regarding the said Certificate of Costs and/or taxation.
4. The Respondent filed a Notice of Preliminary Objection dated 11/02/2025. It was stated that the application ought to be struck out with costs on grounds that this court has no jurisdiction to hear



- the application in light of Mombasa High Court Misc. Civil Application No. E036 OF 2023, Kimani Mwangi t/a Kimani Mwangi Advocates LLP v Sajid Jamshed Malik, and that any enforcement action relating to Mombasa High Court Misc. Civil Application No. E036 of 2023, Kimani Mwangi t/a Kimani Mwangi Advocates LLP v Sajid Jamshed Malik ought to be filed in the said application.
5. It was directed that the application be canvassed by way of written submissions. The Applicant in its submissions dated 25/02/2025. It was that the preliminary objection does not disclose any pure point of law but rather a procedural issue that does not affect the substantive merits of the Applicant's claim. That it therefore does not meet the threshold of a proper preliminary objection and should be dismissed.
 6. The Applicant further argued that the preliminary objection is flawed in light of Article 165 (3) of *the Constitution* of Kenya which grants the High Court unlimited original jurisdiction in criminal and civil matters. That the High Court as a superior court is empowered to enforce its own orders, including those relating to taxation matters.
 7. That Section 51 (2) of the *Advocates Act* does not impose any requirement that an application for entry of judgment must be filed within the same case file where taxation was conducted. That it simply mandates that the application be filed before a court of competent jurisdiction. That Article 159 (2) (d) of *the Constitution* mandates this court to administer justice without undue regard to procedural technicalities, which position was affirmed in *Raila Odinga & Others v Independent Electoral and Boundaries Commission & Others* (2013) eKLR. That the preliminary objection should therefore be dismissed with costs.
 8. On whether the court should adopt the Certificate of costs as a judgment and decree, the Applicant submitted that the application herein is founded on Section 51 (2) of the *Advocates Act* and that in *Amondi & Co. Advocates v County Government of Kisumu* (2021) eKLR, the court held that the only instances where a court may not enter judgment on a certificate of costs is where the certificate has been set aside, varied and/or altered or the retainer is disputed.
 9. On whether the Applicant is entitled to interest on the taxed costs, the Applicant cited Section 7 of the Advocates Remuneration Order which provides that an advocate may charge interest at 14% per annum on his disbursements and costs. The Applicant therefore prayed for this court to grant interest on taxed costs of KShs. 2,455,946/- at 14% per annum from date of reference ruling until payment in full.
 10. The Respondent filed written submissions dated 27/02/2025 stating that the question of jurisdiction is paramount in any adjudication and whenever raised, it must be dealt with first. The Respondent further submitted that a casual reading of the authorities relied upon by the Applicant, the applications for entry of judgment therein were filed in the same files as the court has not made reference to other files.
 11. That the Applicant should not be excused for the frivolous multiplicity of matters that could have been heard and determined in the former matter. That failure or omission of the Applicant to file the application herein in the former file ought not be looked at as a mere technicality and as such, it renders the application fatally defective. That the application herein should therefore be struck out with costs to the Respondents.



Analysis

12. Upon perusal of the application, supporting affidavit and the annexures by the Applicant, the Respondent's Notice of Preliminary Objection and submissions by the parties, the issues for determination are: -
 - a. Whether the Preliminary Objection is merited
 - b. In the answer of (a) above is to the negative, whether this court should enter judgment in favour of the Applicant as per the Certificate of Costs with interest at 14% from 18th December 2024 until payment in full.
13. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696. At page 700, Law, JA stated: -

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

At page 701, Sir Charles Newbold, P added: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”
14. For a Preliminary Objection to succeed the following tests ought to be satisfied; Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid Preliminary Objection should, if successful, dispose of the suit or application.
15. It is not in dispute that the Certificate of Taxation subject to this ruling was issued in Mombasa High Court Misc. App No. 036 of 2023 involving the two parties. The Applicant has not denied that fact but stated that there is no law that requires an application such as this to be filed in the parent file. The Applicant further stated that the court should not be bound by procedural technicalities and relied on Article 159 (2) (d) of *the Constitution*.
16. On Article 159 (2) (d) of *the Constitution*, it mandates the courts to administer justice without undue regard to procedural technicalities. This court has pronounced itself that the provision should not be used in a manner that can be seen as an abuse of the principle. (see Nicholas Kiptoo Arap Korir Salat v IEBC & 6 others [2013] eKLR.)
17. As much as there is no law that forbids a party from filing such an application in a separate suit, I do concur with the submissions by the Respondent and the reliance of the case of Tom Ojienda v County Government of Meru [2021] eKLR as per paragraph 7 and 8 of the Respondent's submissions dated



27/02/2025. The parent file did not become spent once the taxation of the bill of Costs was done. I find that the Preliminary Objection has merits.

18. On costs, the same follows the event. However, the court retains discretion whether to award the same or not. Considering that both parties had before the fallout, each party is to bear its own costs.

Determination

29. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
- a. That the Preliminary Objection dated 11/02/2025 has merits.
 - b. That this suit is hereby struck out.
 - c. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF JULY, 2025

.....

HON. F. WANGARI

JUDGE

In the presence of;

Ms. Kiendi Advocate h/b for Mr. Kimani Advocate for the Applicant

N/A by the Respondent

Norah, Court Assistant

