



Ibrahim, Issack & Co Advocates v Farah Awad & Sons Limited (Miscellaneous Case EE978 of 2023) [2025] KEHC 12333 (KLR) (Civ) (7 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12333 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CASE EE978 OF 2023
SN MUTUKU, J
AUGUST 7, 2025
IN THE MATTER OF THE ADVOCATES ACT, CAP. 16 LAWS OF KENYA
AND
IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER, 2006/2009
AND
IN THE MATTER OF TAXATION OF AN ADVOCATE-CLIENT BILL OF COSTS
BETWEEN
IBRAHIM, ISSACK & CO ADVOCATES APPLICANT
AND
FARAH AWAD & SONS LIMITED RESPONDENT

RULING

1. The Respondent/Applicant herein has filed a Chamber Summons application dated 26th March 2025 under Section 11 (1) and (2) of the Advocates (Remuneration) Order, Order 42 Rule 7 of the Civil Procedure Rules and all other enabling provisions of the law seeking orders specified in that application. That Chamber Summons application is not supported by an affidavit. This failure to file a Supporting Affidavit is the subject of this ruling.
2. On 13th May 2025. Mr. Omondi, counsel representing the Respondent applied, orally, for leave to file the Supporting Affidavit to that Chamber Summons terming the failure to do so as inadvertent. He submitted that this was not a deliberate error and that there was no intention to prejudice the Applicant or the court. Mr. Omondi urged that the Applicant/Respondent can be allowed to file a response to the Supporting Affidavit. He urged that this court has inherent jurisdiction to grant the order sought.



3. The application was opposed by the Applicant/Respondent through Grounds of Opposition dated 5th May 2025 to the effect that the application is incompetent, bad in law and incurably defective for being filed without a Supporting Affidavit as required under Order 52 Rule 3 of the Civil Procedure Rules; that in the absence of a properly sworn affidavit, there is no admissible evidence before the court and therefore the application stands in breach of both procedural law and legal precedent. The Applicant/Respondent urges that the Chamber Summons be dismissed with costs.
4. The Chamber Summons dated 26th March 2025 is yet to be determined. Only prayer two of that application has been granted in the meantime.
5. The record shows that the Chamber Summons in issue is not supported by any affidavit as required under Order 52 Rule 3 (1) of the Civil Procedure Rules.
6. I have considered the arguments for and against allowing the application for leave to allow the Respondent to file a Supporting Affidavit in support of the Chamber Summons dated 26th March 2026. I will and do hereby invoke Section 3A of the Civil Procedure Act which provides as follows:

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
7. The intention of the Respondent in the Chamber Summons is clear as can be discerned from the reading of the Application that:

“Which application is supported by the annexed Affidavit of Muhamud Farah Awad and on such other and/or further grounds, reasons and arguments as may be adduced at the hearing hereof.”
8. My considered view on this issue is that this was an inadvertent omission on the part of the Respondent and/or his advocates in annexing the Supporting Affidavit, as the intention is glaring from the contents of the Chamber Application.
9. In my view, the issues raised in the Grounds of Opposition shall be addressed during the hearing and determination of the Chamber Summons.
10. Consequently, and after considering that the Applicant will not be prejudiced given that the Chamber Summons is yet to be heard, I hereby allow the Respondent, M/s Farah Awad & Sons Limited, to file the Supporting Affidavit to the Chamber Summons dated 26th March 2025. Further, the Applicant, M/s Ibrahim, Issack & Co. Advocates, is granted leave to file a response to the Supporting Affidavit should that become necessary.
11. Each party shall comply with these directions within 14 days from the date of this Ruling.
12. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 7TH AUGUST 2025.

S. N. MUTUKU
JUDGE

