



**M. Korongo & Company Advocates v Monarch Insurance Company Ltd;
Anglo African Property Holdings Limited (Objector) (Miscellaneous Civil
Application E181 of 2022) [2024] KEHC 548 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E181 OF 2022
RE ABURILI, J
JANUARY 30, 2024**

BETWEEN

M. KORONGO & COMPANY ADVOCATES PLAINTIFF

AND

THE MONARCH INSURANCE COMPANY LTD DEFENDANT

AND

ANGLO AFRICAN PROPERTY HOLDINGS LIMITED OBJECTOR

RULING

1. This brief Ruling determines three matters in the same series being HC Misc. No. E180, E181 and E182 of 2022.
2. The Applicant and Respondent are the same in all the three matters. In addition, the three case files relate to Advocate/Client Bill of Costs which were assessed by the Deputy Registrar and certificates of costs issued on 22nd May 2023 and dated 27th April 2023 for various sums of money.
3. Upon the issuance of the certificates of taxation in each of the three files, the Applicant/Advocate herein M. Korongo & Company Advocates instructed Brosis Auctioneers to take out warrants of attachment and sale of the Respondent's movable properties and on 24th August 2023, the said auctioneers proclaimed an assortment of properties believed to belong to the Respondent, the Monarch Insurance Company Limited for recovery of the taxed Advocate/Client Bills of Costs as per the respective certificates of taxation referred to above.
4. No sooner had the Auctioneer proclaimed the said properties than Notice of Objection to attachment in execution of decree was lodged by Anglo African Property Holdings Limited claiming that all the movable office properties-equipment and furniture described and or listed in the schedule to



the proclamation dated 24th August 2023 claiming that the Objector is the lawful owner of the said properties and that the Respondent had only leased the same vide an agreement for leasing dated 7th March 2023 for period of 10 years at a monthly charge of Kshs.120,000 as per the attached Agreement for lease of assets and invoices issued hence it is property exempted from attachment in execution of decree as stipulated in section 44 of the Civil Procedure Act.

5. The Objector prayed for the lifting of the warrants of attachment as levied. The Applicant/Advocate filed Notice of intention to continue with execution by way of attachment and sale of the aforesaid property hence the application which is due for determination by this Ruling.
6. Before I delve into the merits and demerits of the subject application, first things first. I observe that upon the issuance of the certificates of costs in the series matters herein, the advocate proceeded to instruct the auctioneers to attach the properties believed to belong to the Respondent to recover the said taxed Advocate/Client Bill of Costs.
7. Albeit there is no Reference filed or issue of retainer raised and none is pending, and therefore a certificate of costs once issued is final unless set aside or there is a dispute over retainer, Section 51(2) of the Advocates Act stipulates that the Applicant holder of certificate of costs shall apply to court, once certificate of costs is issued, for the court to enter judgment adopting the certificate of costs and issuing a decree, capable of being executed. There is never a shortcut to recovery of costs in advocate client matters, following taxation. See Rubo Kipngetich Arap Cheruiyot v Peter Kiprof Rotich Civil Case No. 193 of 1993.
8. In the absence of a judgment on taxed costs and decree, there would be no basis on which the warrants of attachment were issued. See Njuguna Matiri & Company Advocates v National Bank of Kenya Misc. Application No. 148 of 2014.
9. In the Rubo Kipngetich Arap Cheruiyot case, the court stated as follows and I concur that:

“As far as the parties in this suit are concerned, a certificate of costs is not an executable legal instrument. A certificate of costs is not capable of being executed. Warrants of attachment and sale cannot in law be issued on the basis of a certificate of costs. There must be a decree first.”
10. Under Section 51 of the Advocate Act:
 1. Every application for an order for the taxation of an advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.
 2. The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside, or altered by the court, be final as to the amount of costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.
11. In Ndungu Githuka Advocate v Geoffrey Moriaso Ole Mailoy (2019) eKLR, C. Mwita J stated as follows and I have no reason to differ that:

“Subsection (2) is clear that the certificate of costs once issued by the taxing officer is final unless set aside or altered by the court. The court may also make an order that judgment be entered in terms of the amount in the certificate of costs.”



12. This requirement for the court to enter judgment on taxed costs was also restated in *Lubullelah & Associates v N. K. Brothers*.
13. In this case, as earlier stated, it appears that the Applicant advocate was so much in a hurry to recover his taxed costs that he did not apply to this court under Section 51(2) of the *Advocates Act* for entry of judgment on the certificates of costs and a decree drawn upon which an application for execution could be made and instructions given to the auctioneers to proclaim the Respondents property.
14. The lapse renders the application for execution and the warrants of attachment or proclamation issued premature, null and void.
15. It is for that reason that I need not delve into the merits of the objection proceedings as the execution process was premature, irregular and unprocedural. As there was no decree capable of being executed, I hereby vacate, set aside and raise any attachment of the property believed to belong to the Respondent, whether it is leased or owned.
16. As there is no valid decree, the auctioneers are not entitled to costs of an illegal process. As officers of this court, they ought to have known that they were taking out warrants, to execute a non-existent decree and ignorance of the law is no defence.
17. Each party shall bear their own costs as the court has, on its own motion raised this important point of law and determined it.
18. This Ruling to apply to Misc. Application Nos. E180 and E182 of 2022.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF JANUARY, 2024

R. E. ABURILI

JUDGE

