



REPUBLIC OF KENYA



**Okong'o Wandago & Company Advocates v County Government of Migori (Miscellaneous Civil Application 4 of 2020) [2023] KEHC 24105 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24105 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
MISCELLANEOUS CIVIL APPLICATION 4 OF 2020  
RPV WENDOH, J  
OCTOBER 26, 2023  
IN THE MATTER OF THE ADVOCATES ACT & THE ADVOCATES  
REMUNERATION (AMENDMENT) ORDER, 2014  
AND  
IN THE MATTER OF RECOVERY OF TAXED COSTS AS BETWEEN  
ADVOCATES & CLIENTS**

**BETWEEN  
OKONG'O WANDAGO & COMPANY ADVOCATES ..... APPLICANT  
AND  
COUNTY GOVERNMENT OF MIGORI ..... RESPONDENT**

**RULING**

1. This ruling relates to the Notice of Motion dated 18/8/2020, brought under the provisions of Section 51 (2) of the [Advocates Act](#), Cap 16 and Paragraphs 4 & 7 of the [Advocates Remuneration \(Amendment\) Order](#), 2014.
2. The applicant, Okong'o Wandago & Company Advocates is seeking the following orders: -
  1. The court be pleased to order that the Certificate of Costs issued to the applicant, as against the respondent, be converted into a judgement and decree of this court and consequently, a judgement be entered for the applicant against the respondent for Kshs. 311,375.60/=.
  2. Interest does accrue on the sum of Kshs. 311,375.60/= at the rate of 14% per annum, with effect from 22/5/2018, until payment shall be made in full, as prescribed in paragraph 7 of the [Advocates Remuneration Order](#).



3. Costs of this application be awarded to the Advocates/Applicant.
  4. The court be pleased to tax and determine the costs of this application.
3. The application is based on grounds appearing on the face thereof and it is supported by the affidavit of Marvin Odero, an Associate working with the applicant. He deposed that the respondent retained the applicant to act for them and defend their interest in Migori CMCC No. 807 of 2016 Lameck Onyango Mbani t/a Nyar Kadera Enterprises vs County Government of Migori. There is no dispute on the issue of retainer and/or advocate - client relationship. Subsequently, the applicant issued and served the respondent with an itemized fee - note dated 18/5/2018 on 22/5/2018 (MO-1).
  4. Due to the failure by the respondent to honor the fee - note, the applicant filed and served the respondent with a bill of costs dated 24/2/2020 and a ruling was issued on 14/7/2020. The bill was taxed and certified at Kshs. 311,375.60/=.
  5. The application was opposed. Mr. Oliver Okeno, the Finance Officer in the office of the respondent, swore a replying affidavit dated 29/5/2023. He acknowledged that there was an existing debt of the Kshs. 311,375.60/= after taxation proceedings against the respondent; that on 6/9/2021, the office of the County Attorney wrote to the Chief Finance Officer to process payment and/or settle various taxation awards made in favour of the applicant amounting to Kshs. 2, 722, 665.83/= inclusive of the withholding tax to the Kenya Revenue Authority (KRA); that the aforestated amount included the amount being sought in this miscellaneous cause.
  6. It was further deposed that on 16/11/2021 the Office of the County Attorney made a payment of Kshs. 2, 539,589.25 which included the taxed amount of Kshs. 311,375.60/=; that the amount of Kshs. 2, 539,589.25 was paid to the respondent through the Government Integrated Financial Management Information System (IFMIS); that the payment voucher indicates that the amount paid included Kshs. 311, 375.60/= and therefore there is no outstanding amount and it will be against public interest to make another payment to the respondent as it will lead to double payments.
  7. The applicant filed its submissions which I have duly considered.
  8. The controversy herein is the alleged pending payment of Kshs. 311, 375.60/= owed by the respondent for the legal services procured by the applicant in Migori CMCC No. 807 of 2016 Lameck Onyango Mbani t/a Nyar Kadera Enterprises vs County Government of Migori. The applicant maintains that it has not been paid but the respondent deposed that it settled the said amount.
  9. The alleged pending taxed amount of Kshs. 311, 375.60/= is not disputed. I have considered the annexures by the respondent showing the alleged payments made. Annexure "OO-2" in the respondent's relying affidavit is a letter addressed to the Chief Finance Officer of the respondent by the then County Attorney Ms. Matiko Mang'era. In the letter, the County Attorney asked for a settlement of Kshs. 2, 722, 665.83/= to the applicant being the outstanding legal fees for the various cases the applicant represented it. Item no. 3 on the list is this miscellaneous cause and the amount requested to be settled was Kshs. 311,375.60/=.
  10. Further, annexure "OO-3" is the payment voucher indicating the payee's name as the applicant herein. The particulars of the payment is for legal services rendered as per the various taxation awards. The total amount paid was Kshs. 2, 722, 665.83/= which is the same amount reflected in the advice letter from the office of the County Attorney dated 6/9/2021. The Finance Officer deposed that the payments are made through IFMIS. On the face of the payment voucher there is a stamp indicating that the IFMIS was processed on 1/11/2021.



11. The respondent further deposed that a withholding tax of Kshs. 311,375.60/= was deducted and therefore the final amount paid to the applicant's account was Kshs. 2, 539,589.25. This amount is reflected in the statement from the Central Bank of Kenya dated 29/5/2023. The statement shows that the aforementioned amount was paid to the applicant's firm on 16/11/2021.
12. This court finds that the applicant was paid the alleged outstanding taxed amount of Kshs. 311,375.60/= by the respondent.
13. In the end, the application dated 18/8/2020 lacks merit and it is hereby dismissed with no orders as to costs.

**DATED, DELIVERED AND SIGNED AT MIGORI THIS 26<sup>TH</sup> DAY OF OCTOBER, 2023.**

**R. WENDOH**

**JUDGE**

Ruling delivered in the presence of

Mr. Odero for the Applicant.

No appearance for the Respondent.

Emma & Phelix Court Assistants.

