



Tom Ojienda & Associate v Nairobi City County (Miscellaneous Application E054 of 2018) [2022] KEHC 15558 (KLR) (Civ) (23 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E054 OF 2018
AK NDUNG’U, J
NOVEMBER 23, 2022**

BETWEEN

TOM OJIENDA & ASSOCIATE APPLICANT

AND

NAIROBI CITY COUNTY RESPONDENT

RULING

1. Under a certificate of urgency, and by way of a notice of motion dated April 8, 2022, filed together with a supporting affidavit evenly dated; the applicant sought the following orders:
 - i. That the honourable court be pleased to enter judgment for the applicant against the respondent for the sum of Kshs 897,431/- (eight hundred and ninety-seven thousand, four hundred and thirty-one only) as it appears in the certificate of taxation dated November 8, 2019 with interest from the date of filing this application until payment in full.
 - ii. That the applicant be allowed to execute the judgement herein against the respondent Nairobi City County.
 - iii. That the costs of this application be provided for.
2. The application is premised on grounds;
 - i. That the taxing officer has issued a certificate of taxation in favour of the applicant against the respondent for the sum of Kshs 897,431 in respect of the applicant’s advocate –client bill of costs.
 - ii. That the respondent has been notified and supplied with the certificate of taxation for Kshs 897,431.



- iii. That the respondent has not complied with demands for payment.
- iv. That there are no outstanding issues left for determination and it is therefore fair, just and equitable that the application be granted.

A supporting affidavit by Prof Tom Ojienda SC is on record.

3. There is no response on record and the application is unopposed.
4. The issue for determination in the instant application is whether judgment should be entered against the respondent for the taxed costs due to the applicant. Under section 51(2) of the Advocates Act, this court has power to enter judgment in an advocates' favour on taxed costs as follows:

“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 the 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”.

5. It is an established position of law that the only reason that a court of law cannot enter judgment on a Certificate of Costs is if the same has been set aside or altered, or where there is an issue with retainer. This position has been upheld in various cases including Abmednasir Abdikadir & Company Advocates v National Bank of Kenya Limited (supra), Dally and Figgis Advocates v Homelex Limited (2013) eKLR and Evans Thiga Gaturu Advocate v Kenya Commercial Bank Ltd (2012) eKLR. In addition, rule 7 of the Advocates Remuneration Order provides for interest on the said costs at 14 % until payment in full.
6. In the present application, it is not in dispute that the applicant's bill of costs dated September 14, 2018 was taxed on March 13, 2019 and there is a certificate of taxation dated November 8, 2019 on record certifying the said taxation. neither the ex parte applicant nor the respondent have in this regard brought any evidence of any pending dispute as regards the amount of taxed costs. As the taxed costs and certificate of costs issued to the applicant dated November 8, 2019 has not been challenged, it is therefore deemed to be final, and the applicant is thus entitled to judgment.
7. In the premises I find merit in the applicant's notice of motion dated April 8, 2022 and grant the following orders:
 - i. That judgement be entered for the applicant against the respondent for the sum of Kshs 897,431/- (eight hundred and ninety-seven thousand, four hundred and thirty-one only) as it appears in the certificate of taxation dated November 8, 2019 with interest from the date of filing this application until payment in full.
 - ii. Each party to bear its costs of this application.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF NOVEMBER 2022

.....

A.K. NDUNGU

JUDGE

