



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

MISC. APPLICATION NO. 21 OF 2019

PROF. TOM OJIENDA AND ASSOCIATES.....APPLICANT/ADVOCATE

VERSUS

NAIROBI CITY COUNCILCLIENT/RESPONDENT

RULING NO. 2

1. This ruling is in respect of the Notice of Motion dated 19th March, 2021. The Notice of Motion was taken out by the Advocate/Applicant. It prays for the following orders: -

1. *THAT the Honourable Court be pleased to enter Judgment for the Applicant against the Respondent for the sum of Kshs. 17,777,672.70/- (Seventeen Million, Seven Hundred and Seventy Seven Thousand Six Hundred and Seventy Two and Seventy Cents) as it appears in the Certificate of Taxation dated 26th February 2021 with interest from the date of filing this Application until payment in full.*

2. *THAT the Applicant be allowed to execute the Judgement herein against the Respondent Nairobi City County.*

3. *THAT the costs of this Application be provided for.*

2. The Motion is supported by the Affidavit sworn by the Applicant/Advocate on even date. The Applicant filed written submissions dated 23rd March, 2021.

3. The Motion is opposed by the Respondent through the Grounds of Opposition dated 20th April, 2021. The Respondent also filed written submissions and a List of Authorities both dated 12th July, 2021.

4. The background of the application is fairly straight-forward. The Respondent instructed the Applicant/Advocate to represent it in *Nairobi High Court Constitutional Petition No. 223 of 2011 Hon. Gideon Mbuvi Sonko vs. vs. Attorney General & City Council of Nairobi* (hereinafter referred to as '*the Petition*'). Upon determination of the Petition, the Advocate/Applicant filed an Advocate-Client Bill of Costs.

5. The Bill of costs was hotly contested and duly taxed by the Taxing Officer. The Taxing Officer delivered the ruling and a Certificate of Taxation dated 26th February, 2021 issued. The Bill of Costs was taxed at Kshs. 17,777,672/70.

6. I have carefully considered the application, the Grounds of Opposition, the parties' written submissions and the authorities referred to.

7. The application was brought under Section 51(2) of the Advocates Act. Section 51 of the Advocates Act states as follows: -

(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 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.

8. In this matter, the Respondent did not raise any issue on any retainer. Further, the Certificate of Costs dated 26th February, 2021 has not been set aside or altered by the Court. The law regards such a Certificate of Costs as a basis for entry of judgment for the sums contained in the certificate.

9. Courts have dealt with the issue before. There has been unanimity that unless the issue of retainer is raised or the Certificate of Costs is varied or set aside by a Court, judgment ought to be entered on the basis of the taxed sums. (See *Otieno Yogo & Company Advocates vs. Kisumu Water and Sewerage Company Limited (2018) eKLR*, *Musyoka & Wambua Advocates vs. Rustam Hira Advocate (2006) eKLR*, *Onsongo & Company Advocates vs. African Merchant Assurance Company Limited (2018) eKLR* among others).

10. I agree with the above position. The Motion ought to succeed.

11. In the end, the following orders do hereby issue: -

(a) Judgment be and is hereby entered for the Advocate/Applicant herein, Prof. Tom Ojienda & Associates, against the Respondent herein, Nairobi City Council in the sum of Kshs. 17,777,672/70 with interest at Court rate from the date of the Certificate of Costs, that is 26th February, 2021, until settlement.

(b) The Respondent shall also bear the costs of the Notice of Motion.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF NOVEMBER, 2021.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Ochieng, Learned Counsel for the Advocate/Applicant.

Mr. Njenga, Learned Counsel for the Client/Respondent.

Elizabeth Wanjohi – Court Assistant.