



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW DIVISION

MISCELLANEOUS APPLICATION NO. 60 OF 2017

PROF. TOM OJIENDA & ASSOCIATES.....APPLICANT

-VERSUS-

NAROK COUNTY GOVERNMENT.....RESPONDENT

RULING

The applicant's application is the motion dated 30 April 2019; it is made under section 51(2) of the Advocates Act cap. 16 and seeks for the following orders:

“

- 1. That this honourable court be pleased to enter judgment of the applicant against the respondent for the sum of Kshs. 14, 244,293/= (Kenya shillings Fourteen million two hundred and forty four thousand two hundred and ninety three Only) against the respondent is at appears in the certificate of taxation dated 26th October, 2018 with interest from the date of filing of this application until payment in full.**
- 2. That the Applicant be allowed to execute the judgment herein against the Respondent, Narok County.**
- 3. That the costs of this application be provided for.”**

The application is supported by the affidavit of Prof. Tom Ojienda sworn on 30 April 2019.

Prof. Ojienda has sworn that his firm of advocates represented the respondent in High Court Petition No. 424 of 2015. At the conclusion of the petition, he submitted his advocate-client bill of costs for taxation; it was eventually taxed at Kshs. 14, 244, 293/=. A certificate of taxation dated 26 October 2018 has been exhibited certifying the extent to which the bill was allowed.

It is the applicant's case that the respondent has declined to settle the amount due to him hence the present application.

The respondent opposed the application and filed a replying affidavit. The affidavit was sworn by Elizabeth Sanangoi Lolchoki, in her capacity as the County Secretary of the County Government of Narok.

The respondent does not dispute it owes the applicant the sum of Kshs. 14,244,293/=; as matter of fact, this sum is admitted as owing. To quote Lolchoki, she has sworn in paragraph 4 of the affidavit as follows:

“That I am aware that the respondent herein, the County Government of Narok, through the office of the Governor has been in negotiations with Professor Tom Ojienda on modalities of remitting the sum of Kshs. 14, 244, 293/= as taxed on 27th September, 2018 and that the said negotiations are still underway.”

The only reason given why the respondent has not settled the amount due is what one would call budgetary constraints of the respondent. This is revealed in paragraph 11 of the affidavit where it has been sworn as follows:

“That as it stands, the County Government's accounts are limited and cannot sustain the full payment of the pending bill in

this matter as well as that in JR. Misc. Application No. 59 of 2017 which was taxed at Kshs. 8,842,648.00”.

In a nutshell, though the respondent filed a replying affidavit, no valid reason has been given why judgment should not be entered against it as prayed by the applicant. Considering that the respondent admits the amount due the application is, in effect, unopposed.

In the circumstances, I allow the application in terms of prayer 1 of the motion. Prayer 2 is unnecessary as execution would follow as a matter of course. The applicant shall also have costs of the application. It is so ordered.

SIGNED, DATED AND DELIVERED ON 17TH DECEMBER, 2021

NGAAH JAIRUS

JUDGE