



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW**

**MISCELLANEOUS APPLICATION NO. 49 OF 2015**

**IN THE MATTER OF AN: APPLICATION BY PROF. TOM OJIENDA ASSOCIATES  
ADVOCATES FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF: THE HIGH COURT MISC APPLICATION No. 49 OF 2015**

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

**VERSUS**

**ISIOLO COUNTY ASSEMBLY SERVICE BOARD.....1<sup>ST</sup> RESPONDENT**

**THE CLERK, COUNTY ASSEMBLY OF ISIOLO.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The notice of motion dated 7<sup>th</sup> November 2016 is brought under the provisions of Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya. The application seeks for judgment against the respondent for shs 5, 324 281.90 as per the Certificate of Taxation dated 7<sup>th</sup> June 2016. It also seeks for interest from the date of filing of the application until payment in full. The applicant Prof Tom Ojienda & Associates Advocates also seek for leave to execute judgment against the respondent and costs.

2. The grounds in support of the notice of motion are on the face of the motion and as supported by the annexed affidavit sworn by **Professor Tom Ojienda** and the annexures thereto.

3. Among the annexures is the certificate of taxation dated 7th June 2016 for shs 5, 314, 281.90 as taxed on 24<sup>th</sup> October 2015. There is also copy of the bill as taxed.

4. The respondents were served on 7<sup>th</sup> December 2016 but there is no appearance or response to the application. There is also no reference filed to challenge the Certificate of Taxation issued by the Taxing Officer.

5. Under Section 51(2) of the Advocates Act, where retainer is not disputed and costs are taxed, an order that judgment be entered for the sum certified to be due with costs may issue, on application.

6. The taxed costs are between advocate and client. There is no challenge to the advocate's retainer.
7. Accordingly, I find prayer No. 1 of the notice of motion dated 7th November 2016 merited.
8. I enter judgment for the applicant in the sum of shs 5,324,281.90 as per the Certificate of Taxation of costs dated 7th June 2016. The said sums of money shall attract interest at court rates from date of filing of the application until payment in full.
9. A decree shall issue for the judgment sum with interest at court rates as decreed above.
10. I decline to grant prayer No. 2 as execution process has to be followed after Decree and Certificate of Order Against the Government are issued and demand for settlement made.
11. I further order that each party do bear their own costs of this application.

Dated, signed and delivered at Nairobi this 14th day of December 2016.

**R.E.ABURILI**

**JUDGE**

In the presence of:

Miss Awuor h/b for Prof Tom Ojienda-Applicant

N/A for the Respondent

CA: Lorna