



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MISC. APPLICATION NO. 31 OF 2019

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

-VERSUS-

CITY COUNCIL OF NAIROBI.....RESPONDENT

JUDGMENT

On 12th September 2019, the Applicant's advocate/client bill of costs was taxed as against the Respondent in the sum of Kshs. 680,936.82 and a certificate of costs for that amount issued to the Applicant by the taxing officer on 3rd March 2021. The taxation of the Applicant's bill of costs aforesaid has neither been varied nor set aside. What is now before the court is the Applicant's Notice of Motion application dated 9th March 2021 in which the Applicant has sought the following orders;

1. That the Honourable Court be pleased to enter judgment for the Applicant against the Respondent for the sum of Kshs. 680,936.82/= as it appears in the Certificate of Taxation dated 3rd March 2021 with interest from the date of filing this Application until payment in full.
2. That the Applicant be allowed to execute the judgment herein against the Respondent City Council of Nairobi.
3. That the Cost of this Application be provided for.

The application is supported by an affidavit sworn by Prof. Tom Odhiambo Ojienda SC on 9th March 2021. The Applicant has averred that the taxing officer taxed the Applicant's bill of costs and issued a certificate of taxation in the Applicant's favour against the Respondent in the sum of Kshs. 680,936.82/=. The Applicant has averred that the Respondent has not paid the said sum of Kshs. 680,936.82/=. The Applicant has averred that there is no outstanding dispute between the Applicant and the Respondent in respect of the said taxed costs.

The Respondent opposed the application through grounds of opposition dated 13th May 2021. The Respondent has contended that the application is premature, misconceived and incompetent. The Respondent has averred that it has not refused to settle the Applicant's costs. The Respondent has averred that it settles claims such as the one lodged by the Applicant through funds received from the National Government. The Respondent has averred that the National Government has not provided it with adequate funds for settling claims.

The court directed that the application be argued by way of written submissions. The Applicant has filed submissions dated 31st March 2021 while the Respondent has not filed submissions. I have considered the application together with the affidavit filed in support thereof. I have also considered the grounds of opposition filed by the Respondent. Finally, I have considered the submissions on record. The only issue arising for determination is whether judgment should be entered in favour of the Applicant for its taxed costs. Section 51(2) of the Advocates Act, Chapter 16 Laws of Kenya provides that:

“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.”

In *Amondi & Co Advocates v County Government of Kisumu* [2021] eKLR, the Court stated as follows with regard to Section 51(2) of the Advocates Act:

“7. Having regard to the above provision it is clear that the only instances where a court may not enter judgment on a certificate of costs is where the certificate has been set aside, varied and/or altered or the retainer is disputed. See Republic -

vs- City Council of Nairobi, Ivyland Park Ltd (interested party) Ex parte Inderpal Singh & 2 others (2021) eKLR where P. Nyamweya J (as she then was) stated: -

‘It is an established position of law that the only reason 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 of retainer.’”

It is common ground that the certificate of costs in favour of the Applicant has neither been varied nor set aside. It is also common ground that the retainer is not disputed. The grounds put forward by the Respondent in opposition to the Applicant’s application for judgment on the certificate of costs in its favour is not recognized in law. I am satisfied that the Applicant’s application has merit.

In conclusion, I hereby enter judgment for the Applicant in the sum of Kshs. 680,936.82/= together with interest at the rate of 14% per annum with effect from 12th September 2019 until payment in full. The Applicant shall have the costs of the application.

DELIVERED AND DATED AT NAIROBI THIS 24TH DAY OF FEBRUARY 2022.

S. OKONG’O

JUDGE

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Okore for the Applicant

Ms.Kamunya for the Respondent

Ms. C.Nyokabi-Court Assistant