



Otieno Ragot & Company Advocates v Municipal Council of Kisumu (Environment & Land Miscellaneous Case 17 of 2020) [2022] KEELC 14965 (KLR) (24 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14965 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND MISCELLANEOUS CASE 17 OF 2020**

E ASATI, J

NOVEMBER 24, 2022

BETWEEN

OTIENO RAGOT & COMPANY ADVOCATES APPLICANT

AND

MUNICIPAL COUNCIL OF KISUMU RESPONDENT

(Arising from the professional legal services rendered by the applicant to the Respondent in KISUMU ELC NO. 453 OF 2015)

RULING

1. This ruling is in respect of the Applicant/Advocate's Notice of motion Application dated November 18, 2020. That application is brought pursuant to the provisions of Section 51(2) of the *Advocates Act* Cap 16 Laws of Kenya. It seeks for orders that; -
 - a. The court adopts the Certificate of Costs issued herein in relation to the applicant's/ Advocate's Bill of costs dated June 29, 2019 in the sum of Kshs 161, 875.64 (Kenya shillings one hundred and sixty one eight hundred and seventy five and sixty four cents only, as the judgement and decree of the court.
 - b. The applicant be awarded interest on the taxed costs at court rates from July 11, 2019 until full payment
 - c. The costs of the application and the taxation process herein be borne by the Respondent
2. The grounds of the application are that the applicant was retained by the respondent to represent him in Kisumu ELC No 453 of 2015 *Moris Molo Midianga And Pamela Atieno Midianga v Joel Mayaka & Municipal Council Of Kisumu*. That the applicant did represent the Respondent in the suit. That the applicant's costs have already been taxed by the court on August 12, 2020 in the sum of Kshs 161, 875.64 and a certificate of costs issued certifying the same. That the certificate of costs has neither been



set aside nor otherwise altered by the court by way of review or any reference on taxation. That the Respondent has not settled the taxed amount. That the applicant is therefore entitled to the orders sought.

3. The application is supported by the averments in the Supporting Affidavit sworn on December 18, 2020 by Faustine Osewe Advocate an associate in the applicant law firm and the annexures thereto.
4. The application is unopposed. Affidavit of Service sworn by James Otieno Okudo a court process server shows that the Respondents were served with hearing Notice for hearing of the application on November 15, 2022. A copy of hearing notice annexed to the said Affidavit of service was duly received at the Office of the County Attorney, County Government of Kisumu on April 24, 2022. There was however no attendance on behalf of the Respondent on November 15, 2022 hence the application was heard ex parte.
5. Section 51(2) pursuant to which the application was brought 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 judgement be entered for the sum certified to be due with costs.”
6. I have read the Notice of Motion Supporting Affidavit and annexures thereto. I have also read the court record generally and in particular, the ruling of the taxing Officer herein dated June 29, 2020 and the resultant certificate of costs. There being no opposition to the application. The certificate of costs having not been reviewed or altered and given that the retainer is not disputed; I find that the application is merited. I allow the application and hereby enter judgement in favour of the applicant on the basis of the certificate of costs dated August 12, 2020 for Kshs 161, 875.64, interest thereon at court rates and costs of the application of and the taxation process.
7. Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 24TH DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

No appearance for the Applicant/Advocate

No appearance for the Respondent/Client

E. ASATI

JUDGE.

