



**Republic v County Secretary, County Government of Kiambu & 2 others;  
Legorn Feeds International Ltd (Exparte Applicant) (Judicial Review Application  
E007 of 2022) [2023] KEELC 21711 (KLR) (9 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21711 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
JUDICIAL REVIEW APPLICATION E007 OF 2022  
BM EBOSO, J  
NOVEMBER 9, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF KIAMBU .... 1<sup>ST</sup>  
RESPONDENT**

**CHIEF OFFICER, FINANCE , COUNTY GOVERNMENT OF  
KIAMBU ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE COUNTY  
GOVERNMENT OF KIAMBU ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**LEGORN FEEDS INTERNATIONAL LTD ..... EXPARTE APPLICANT**

*(Certificate of Taxation dated 30/9/2022 arising from the Decree issued on 23/12/2021 by  
the Environment and Land Court of Kenya at Thika in Thika ELC Case No 84 of 2019)*

**JUDGMENT**

1. Through a judicial review motion dated 16/3/2023, the *Exparte* applicant seeks an order of *mandamus* compelling the respondents to satisfy the decree of this Court [Gacheru J] dated 9/12/2021, issued on 23/12/2021, together with the taxed costs comprised in the Certificate of Taxation dated 30/9/2022. The motion is supported with an affidavit sworn on 16/3/2023 by Stephen Waithiru Baiya, a verifying affidavit sworn by the same deponent, dated 14/11/2022, and a statutory statement dated 14/11/2022. The motion was canvassed through written submissions dated 1/8/2023.



2. The case of the *Exparte* applicant is that they obtained Judgment against the County Government of Kiambu in Thika Environment and Land Court Case No 84 of 2019, decreeing the County Government of Kiambu to pay them Kshs 15,159,605 as compensation for the loss which they suffered as a result of the demolition of their perimeter wall. They further contend that they were awarded costs of the said suit and the said costs were subsequently taxed at Kshs 510,082.10/=. They add that they subsequently issued and served a certificate of order in tandem with the requirements of the [Government Proceedings Act](#). It is their case that despite the foregoing, the County Government of Kiambu [hereinafter referred to as “the County Government”] has failed to satisfy the decree. They urge the court to grant the order of *mandamus*.
3. The respondents oppose the application through a replying affidavit sworn on 17/5/2023 by Waithira Waiyaki, the County Attorney of the County Government. Further, the respondents oppose the application through written submissions dated 31/10/2023, filed by J. J Cheserek, a legal counsel in the Office of the County Attorney of the County Government.
4. The case of the respondents is that, Judgment having been entered against the County Government and Babayao Ferdinand Ndungu Waititu jointly and severally for Ksh 15,159,605, the County Government is only liable to pay half of the decretal sum, to wit, Kshs 7,579,803. They further contend that the County Government is not liable to pay costs of the suit at this point in time because the decree-holder has not caused the award comprised in the certificate of taxation to be adopted as a judgment of the Court in tandem with the requirements of Section 51 of the [Advocates Act](#).
5. The respondents further contend that they have neither refused nor neglected to satisfy the decree, adding that they rely on money appropriated by Parliament and disbursements made by the National Treasury. It is their case that the one half portion of the decretal amount in the sum of Kshs 7,579,803 was to be factored in the 2023/2024 Budget and is to be settled once monies are released by the National Treasury.
6. I have considered the motion, the response to the motion, and the parties’ respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The following are the key issues that fall for determination in this Miscellaneous Application:
  - (i) Whether, by dint of the decree of this Court issued in Thika ELC Case No 84 of 2019, the County Government of Kiambu is liable to satisfy only one half of the decretal sum;
  - (ii) Whether an order adopting the award comprised in the certificate of taxation as a judgment of the court is a mandatory requirement before the award can be enforced;
  - (iii) Whether an order of *mandamus* is merited in the circumstances of this application; and
  - (iv) What order should be made in relation to costs of this Miscellaneous Application. I will analyze and dispose the four issues sequentially in the above order.
7. The first issue is whether the County Government of Kiambu, as one of the two joint and several judgment debtors in Thika ELC Case No 84 of 2019, is liable to pay only one half of the decreed principal sum of Kshs 15,159,605. The Judgment of the trial court was not exhibited. What was exhibited is the decree. The relevant part of the decree reads as follows:
  - “4. That damages be and are hereby awarded in compensation for loss suffered by the plaintiff during and after the demolition of the perimeter wall for Kenya Shillings Fifteen Million One Hundred and Fifty Nine Thousand Six Hundred and Five (Kshs 15,159,605).



5. That costs of the suit be and are hereby awarded to Legorn Feeds International Limited and interest on (4) above until payment in full.”
8. Although the Judgment of the court was not exhibited, the County Attorney acknowledged in paragraph 2 of the replying affidavit dated 17/5/2023 that the award of Kshs 15,159,605 was made against the two defendants jointly and severally. There is therefore no contestation on the fact that the award was made against the two defendants jointly and severally.
9. What is the legal implication of a decree that is issued against two defendants jointly and severally? Our superior courts have had occasion to answer the above question in a line of decisions.
10. In High Court (Milimani Commercial Courts) Civil Case No 423 of 2002; *Kenya Airways Limited v Mwaniki Gichobi and Njeru Njathika Nyagab* (UR) where Ringera J (as he then was) spelt out the law on the tenor and meaning of joint and several liability:
- “The concept of joint and several liability comprehends one judgement and decree against two or more persons who are liable collectively and individually to the full extent of such decree; however double compensation is not allowed and accordingly whatever portion of the decree is recovered against one of such defendant cannot be recovered from the other defendant(s).”
11. In *Republic v PS in Charge of Internal Security Exparte Joshua Paul* [2013] eKLR the court reiterate the law as follows:
- “Clearly therefore where you have joint liability all the tortfeasors are and each is liable to settle the full liability. However, in a purely several liability each tortfeasor is only liable to settle the sum due to the tune of his liability. Where, however, the liability is joint and/or several the plaintiff has the option of either directing his claim against any one of the tortfeasors or making his claim against each one of the tortfeasors according to their individual liability. Either way, he cannot recover more than the total sum decreed. However, the defendants are entitled to reimbursement from the co-defendants in the event that the plaintiff only opts to recover from one of them.”
12. Joint and several liability entitles a judgment creditor to elect to recover the full amount of the debt from any one of the defendants or recover a share from each or any of them. By joint and several liability, the defendants are each placed in law in the position where they are all exposed to the full amount of any share sought by the judgment creditor. If the creditor chooses to recover from only one defendant, such defendant is entitled to recover by way of reimbursement from the other defendants.”
13. It is therefore clear from the prevailing jurisprudence on the above question that where a decree is issued against two or more defendants jointly and severally, the decree holder is entitled to recover the entire decretal sum from one of the judgment debtors. Secondly, the judgment debtor from whom the decretal sum is recovered is entitled to a re-imbursement from the co-defendant/co-judgment-debtor.
14. The above is, regrettably, the position in which the County Government of Kiambu finds itself in. Consequently, my finding on the first issue is that the County Government of Kiambu, as one of the two joint and several judgment debtors in Thika ELC Case No 84 of 2019, is liable to satisfy the entire decretal award of Kshs 15,159,605 together with the decreed costs as taxed. For the avoidance of doubt, costs are a component of the decree [see item number 5 in the decree].



15. The second issue is whether the award comprised in the certificate of taxation issued upon taxation of the party and party bill of costs requires an order of the court adopting the award as a judgment of the court before it can be enforced. The respondents relied on the framework in Section 51 of the *Advocates Act* in contending that a certificate of costs arising from a party and party bill of costs cannot be enforced until the taxed award is adopted as a judgment of the court.
16. Section 51 of the *Advocates Act* provides thus:
  - “(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.”
17. It is clear from the wording Section 51 of the *Advocates Act* that the framework makes provision for the taxing of an advocate/ client bill of costs. It requires that the advocate’s bill of cost be made/ drawn “In the matter of that advocate” eg “In the matter of an application for taxation of a bill of costs by . .... Advocate.” An advocate/client bill of costs is normally presented as a stand-alone miscellaneous application.
18. Section 51(2) requires that where a bill of costs has been taxed and the fact of retainer of the advocate by the client is not in contest, an application for adoption of the award as a judgment of the court be made to the court. This requirement does not apply to a certificate of taxation issued pursuant to a party and party bill of costs. This is because, a party and party bill of costs, unlike an advocate/client bill of costs, is filed in an existing cause where either a judgment or final ruling has already been rendered and an award of costs has been made. It does not require a second judgment in the same cause.
19. I have said enough to demonstrate that the respondents have misconstrued the framework in Section 51 of the *Advocates Act* and have failed to draw a distinction between a certificate of taxation issued pursuant to an advocate/client bill of costs and a certificate of taxation issued pursuant to a party and party bill of costs. For avoidance of doubt, a certificate of taxation issued pursuant to a party and party bill of costs does not require to be adopted as a judgment of the court before it can be enforced.
20. For the above reasons, it is the finding of this court that the award comprised in the certificate of taxation issued in Thika ELC Case No 84 of 2019 which is a party and party certificate of taxation, it does not require adoption as a judgment of the court under Section 51 of the *Advocates Act*. The said award became ripe for enforcement once the certificate of taxation was issued.
21. Is the plea for an order of *mandamus* merited at this point? The decree and the certificate of taxation have not been disputed or contested. What the respondents doubted is the County Government’s liability to satisfy the decree wholly. The court has made a finding that under the prevailing law, the County Government is liable to satisfy the decree wholly and thereafter pursue a re-imbursement from the co-defendant/ co-judgment debtor. Put differently, under the prevailing law, the decree holder is entitled to recover the entire decretal sum from the County Government or from the other judgment debtor.
22. Secondly, there is no appeal or stay order against the judgment and decree in Thika ELC Case No 84 of 2019. The only reason which the respondents advanced in urging the court not to grant the order



of *mandamus* was that they were waiting for appropriation of the 2023/2023 funds by Parliament and the subsequent appropriation by the County Assembly. The 2023/2024 appropriations have since happened. We are heading to the end of the second half of the 2023/2024 Financial Year.

23. In the above circumstances, there is no proper basis, at this point in time, why the respondents should not be compelled to satisfy the decree. Consequently, it is the finding of this court that the *Exparte* applicant is entitled to an order of *mandamus* in terms of prayer 1 of the notice of motion dated 16/3/2023.
24. What order should be made in relation to costs of this suit? The general principle is that costs follow the event. A departure from the above general principle should have a proper basis.
25. From the evidence presented in this motion, it does emerge that the certificate of taxation was issued on 2/2/2022 and was served on the County Government vide a letter dated 10/2/2022. It was received by the County Government on 15/2/2022. However, the decree holder did not cause the bill of costs to be taxed promptly. The bill of costs was taxed on 19/9/2022. A formal certificate of taxation was subsequently issued on 30/9/2022 and was served on the County Government vide a letter dated 30/9/2022. It was received by the County Government on 3/10/2022.
26. From the foregoing, it is clear that the County Government had only the period from 3/10/2022 to June 2023 to make budgetary provisions for the decretal award in Thika ELC Case No 84 of 2019. The present miscellaneous application was initiated on 14/11/2022. Although the decretal sum was due then, the County Government did not have the certificate of taxation to enable it include the debt in the 2022/2023 Budget. In the circumstances, the County Government cannot be blamed for failure to include the award in the 2022/2023 Budget. For the above reason, there will no award of costs in the present suit.
27. In light of the foregoing, the court is satisfied that a proper case has been made for grant of an order of *mandamus*. The following orders are accordingly issued:
  - a. An order of *mandamus* is hereby issued compelling the 1st, 2nd and 3rd respondents to comply with the Certificate of Order against the County Government of Kiambu issued on 2/2/2022 for payment of the decretal sum and the settlement of the sum in the Certificate of Taxation dated 30/9/2022 arising from the Decree issued on 23/12/2021 by the Environment and Land Court of Kenya at Thika in Thika ELC Case No 84 of 2019: Legorn Feeds International Limited versus County Government of Kiambu and Babayao Ferdinand Ndungu Waititu.
  - b. The respondents shall have the remaining period of the 2023/ 2024 Financial Year to comply with the order of *mandamus*.
  - c. Parties shall bear their respective costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 9<sup>TH</sup> NOVEMBER 2023**

**B M EBOSO**

**JUDGE**

In the presence of: -

Ms Waigwa for the *Exparte* Applicant

Court Assistant: Osodo/Hinga

