



Tom Ojienda & Associates v National Land Commission (Miscellaneous Application E259 of 2023) [2025] KEHC 1980 (KLR) (Commercial and Tax) (14 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1980 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E259 OF 2023
FG MUGAMBI, J
FEBRUARY 14, 2025**

BETWEEN

PROF TOM OJIENDA & ASSOCIATES ADVOCATE

AND

NATIONAL LAND COMMISSION CLIENT

RULING

Background and Introduction

1. The application before me is a Notice of Motion dated 5th February, 2024 brought under the provisions of Sections 51(1) and (2) of the *Advocates Act*, Cap 16 of the Laws of Kenya. The advocate seeks the following orders:
 - i. That the Honourable Court be pleased to enter judgment for the Advocate/applicant against the client/respondent in the sum of Kshs.9,315,369.50/= as appears in the Certificate of Taxation dated 31st January, 2024 together with interest from the date of filing the Advocate Client Bill of costs, that is 31st March, 2023 until payment in full; and
 - ii. That the applicant be allowed to execute the judgment herein against the Respondent.
 - iii. The costs of the application be provided for.
2. The application is brought on the grounds set out on its face and is supported by an affidavit sworn on 5th February 2024 by Prof. Tom Ojienda, an advocate of the High Court of Kenya, practicing with the advocate's firm.
3. Prof. Ojienda asserts that the applicant filed an advocate-client Bill of Costs dated 31st March 2023, seeking a sum of Kshs 35,911,653.50 as legal fees due and owing from the respondent. Pursuant to



the court's ruling delivered on 19th January 2024, the bill was taxed at Kshs 9,315,369.50/=, and a Certificate of Taxation was issued on 31st January 2024. The Certificate of Taxation remains valid and has not been set aside or altered to date.

4. Despite being properly served with the application and despite the respondent's counsel repeatedly requesting and receiving extensions to file a response and submissions the respondent failed to do so within the given deadlines. For clarity, as of the date of this ruling, no response or submissions have been filed.

Analysis and Determination

5. The sole issue for determination is whether the court should enter judgment in favour of the advocate/applicant as prayed.
6. Under Section 51(2) of the *Advocates Act*, the advocate/applicant is entitled to judgment for the amount specified in the certificate of taxation, provided that the amount has not been set aside or varied. The section states:

“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 recovered thereby; and the court may make such orders in relation thereto as it thinks fit, including where the retainer is not disputed an order that judgment be entered for the sum of certified to be due with costs.”

7. In the present case, no reference or challenge has been filed against the taxation. Consequently, the Certificate of Taxation remains uncontroverted and binding. In light of this, I hold that the court has no further discretion in this matter and is obligated to adopt the taxed amount, as specified in the Certificate of Costs, as the judgment of this court.
8. In the case of *Lubullelah & Associates Advocates v N.K. Brothers Limited*, (2015) eKLR the court held that:

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs.”

Disposition

9. In the circumstances I hereby enter judgment for the firm of Prof Tom Ojienda & Associates for the sum of Kshs. 9,315,369.50/= as appears in the Certificate of Taxation dated 31st January, 2024 against the National Land Commission together with interest from 31st March 2023 until payment in full but with no orders as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14TH DAY OF FEBRUARY 2025.

F. MUGAMBI

JUDGE

