



**Gituma Otieno & Company Advocate v Nairobi City County  
Government (Judicial Review Miscellaneous Application E011 of 2023)  
[2025] KEHC 3022 (KLR) (Judicial Review) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3022 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E011 OF 2023  
JM CHIGITI, J  
MARCH 14, 2025**

**BETWEEN**

**GITUMA OTIENO & COMPANY ADVOCATE ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... RESPONDENT**

**RULING**

**Applicant's case;**

1. The application that is before this Court for determination is the Notice of Motion dated 1<sup>st</sup> July, 2024 wherein the Applicant is seeking the following orders:
  1. Spent ...
  2. That the Certificate of Costs issued herein on 26<sup>th</sup> April, 2023 with respect to the ruling delivered on 20<sup>th</sup> April, 2023 for the sum of Kenya Shillings One Million, Two Hundred and Forty, Seven, Four Hundred and Sixty, One and Fifteen Cents Only (Kshs.1,247,461.15/=) be adopted as judgment and decree of this Honourable Court, together with costs and interest at 14% p.a from 7<sup>th</sup> March, 2023 until payment in full.
  3. That costs of this Application be borne by the respondent
2. The Applicant filed a bill of costs dated 3<sup>rd</sup> February, 2023 which was taxed by the taxing master on 20<sup>th</sup> April, 2023. A Certificate of Taxation was thereafter issued on 26<sup>th</sup> April, 2023.
3. No reference has been filed by the respondent and the certificate of taxation has neither been set aside nor varied.



4. The applicant argues that the respondent has remained adamant, ignored, refused and/or neglected to make good the payment due and owing to them.
5. It is submitted that Section 51(2) of the *Advocates Act* provides that once a certificate of taxation is issued and remains unaltered and/or set aside, the court is duty bound to enter judgment for the amount indicated in the certificate of taxation.
6. Reliance is placed in Misc. Civil Application No. 667 of 2017 - Waiganjo Wachira & Company Advocates v Pacis Insurance Company Limited [2020] eKLR, where the Court in allowing a similar application at paragraphs 12 and 13 stated respectively as follows;

“12. The provision of Section 51(2) of the *Advocates Act* is well settled that a certificate of taxation is final unless and until it is set aside or varied. The court in *Owino Okeyo & Company Advocates v Fuelex Kenya Limited* [2005] eKLR reaffirmed the above position when it held thus:

“In my understanding of the provisions of Section 51 (2) of the *Advocates Act*, it enables an advocate to get judgment for the taxed costs...provided that his client did not dispute the fact that the advocate had been instructed (or retained) in the first instance.”

13. A similar reasoning was adopted by the court in the case of *Lubulellah & Associates Advocates v NK Brothers Limited* [2014] eKLR in the following manner:

“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.”

7. Reliance is also placed in by the court in the case of *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR in the following manner:

“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.” 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 v 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.

8. It is the applicant’s case that by dint of Rule 7 of the Advocates (Remuneration) Order they are may charge interest of up to 14% per annum, on their disbursements and costs as was held in Misc. Civil Application No. 84 OF 2016 Otieno Yogo & Company Advocates v Kisumu Water and Sewerage Co. Limited [2018] eKLR, as follows:

“7. I have considered the provisions of Rule 7 of the Advocates Remuneration Order which provides: -

“An Advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”

8. The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of the Bill of Costs. There is evidence that the bill of costs was received by the Respondent on 12.7.16 and thirty (30) days from the delivery of the bill to the client expired on 12.8.16 but Applicants seeks interest from 5.2.18.”

#### **The Respondents case:**

9. The Respondent oppose the Application through a Grounds of Opposition 4<sup>th</sup> December, 2024 wherein they contended that:
  1. The Application is frivolous, vexatious and amounts to an abuse of the Court’s process.
  2. The Application is fatally incompetent, incurably defective
  3. The delay in executing the Ruling is due to the fact that all expenditures by the County Government are appropriated by the County Assembly in each financial year and spending



any public funds without any prior authorization and budgetary appropriation is an offence under the [Public Finance Management Act](#), 2012.

4. Part IV-the County Government Responsibilities with respect to management and control of public finance under the [Public Finance Management Act](#) cap 412C of the Laws of Kenya, the statutory duty to pay out funds from the County Treasury vests in the County Executive Committee Member in charge of finance.
  5. The Respondent waits for budgeting, allocation and approval of the taxed sum from the County Executive Committee Member in charge of Finance.
  6. The County Government must follow statutory procedures and has limited resources which make it difficult for it to balance its competing interests, including settling decrees to the public.
  7. The immediate settlement of the taxed sum amounting to Kenya shillings one Million, Two Hundred and Forty- Seven Thousand, Four Hundred and Sixty-One and Fifteen Cents (Kshs. 1,247,461.15/=) would require Constitutional or County Legislation Approval which has not been given to the Respondent due to the closed budget cycle.
  8. The closure of the budget cycle is beyond the Respondent's limit and/or intervention thus the delay in the said settlement.
  9. The Respondent is currently not in a position to pay off the taxed sum since the County Government is in the middle of its financial year and such funds would have to have been provided for in the County Budget.
  10. The Respondent is ready to pay once the same is allocated for, approved and passed by the County Assembly as provided in Section 125 of the [Public Finance Management Act](#), 2012.
  11. The Orders sought by the Applicant are devoid of merit hence the instant Application is hopelessly misadvised and ought to be struck out by this Honourable Court.
10. It is their submission that that the Ruling delivered on 20<sup>th</sup> April, 2023 is not capable of execution since its responsibilities with respect to management and control of public finance under the [Public Finance Management Act](#) cap 412C of the Laws of Kenya lie with the County Executive Committee Member in charge of finance and not the Respondent.
  11. They argue further, that expenditures by the Respondent are appropriated by the County Assembly in each financial year spending any public funds without any prior authorization and budgetary appropriation is an offence and therefore an illegality under the [Public Finance Management Act](#), 2012.
  12. According to the Respondent, the procedure as set out under Section 104 (1) (a) and (b) of the [Public Finance Management Act](#) 2012, (hereinafter referred to as the Act) is that the responsibility of the County Treasury is to prepare a budget for a County which is then submitted for approval by the County Assembly and thereafter under Section 118 of the Act, the County Treasury prepares a budget review and outlook paper to the County Executive which discusses the outlook paper and after approval it is laid before the County Assembly before it is published and publicized.
  13. They further argue that from the foregoing no statutory duty is imposed upon them to execute the said Ruling.
  14. The Respondent contends that its duties are provided for in Section 44 (3) of the [County Governments Act](#), 2012 and that this does not include the processing, identifying and/or effecting any payments on behalf of the County Government.



15. Reliance is placed in the case Republic v County Government of Nairobi, · KCB Bank Limited (Exparte) (Judicial Review Application E077 0(2022) (2023/KEHC 22611 (KLR) (Judicial Review) (21 September 2023) (Judgment), where this court held that:

“ ... It is neither in the interest of this Court nor that of the ex parte applicant that the respondent should be brought to its knees. The Court appreciates and it is a matter of judicial notice that most of the local authorities are reeling under the weight of the debts accrued by their predecessors and that they are trying to find their footing in the current governmental set up. Accordingly, I am satisfied based on the material on record that the respondent ought to be given some breathing space to arrange its finances and settle the sum due herein.”

16. The applicant filed further submissions dated 23<sup>rd</sup> January, 2025 to buttress the grounds of opposition.
17. It is contended that the grounds of opposition have been filed and served out of time and without leave of this honorable court.
18. The applicant argues that the Respondent has not demonstrated to this court how its application which is anchored on trite legal provisions is frivolous, vexatious and amounts to an abuse of Court process.
19. The applicant prays that the Respondent’s grounds of opposition be struck out with costs and that it’s notice of motion dated 1<sup>st</sup> July, 2024 be allowed as prayed.

#### **Analysis and Determination:**

**The issue for determination is whether the Applicant has made out a case for the grant of the order sought.**

20. In the case of Owino Okeyo & Company Advocates v Fuelex Kenya Limited [2005] eKLR the court held thus:

“In my understanding of the provisions of Section 51 (2) of the *Advocates Act*, it enables an advocate to get judgment for the taxed costs...provided that his client did not dispute the fact that the advocate had been instructed (or retained) in the first instance.”

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 12<sup>th</sup> September 2019 until payment in full. The Applicant shall have the costs of the application.



In the instant matter the Respondent oppose the Application through a Grounds of Opposition dated 4<sup>th</sup> December, 2024. They contended inter alia that:

1. The Application is frivolous, vexatious and amounts to an abuse of the Court's process.
2. The Application is fatally incompetent, incurably defective.
3. The delay in executing the Ruling is due to the fact that all expenditures by the County Government are appropriated by the County Assembly in each financial year and spending any public funds without any prior authorization and budgetary appropriation is an offence under the [Public Finance Management Act, 2012](#).
4. Part IV-the County Government Responsibilities with respect to management and control of public finance under the [Public Finance Management Act](#) cap 412C of the Laws of Kenya, the statutory duty to pay out funds from the County Treasury vests in the County Executive Committee Member in charge of finance.
5. The Respondent waits for budgeting, allocation and approval of the taxed sum from the County Executive Committee Member in charge of Finance.
6. The County Government must follow statutory procedures and has limited resources which make it difficult for it to balance its competing interests, including settling decrees to the public.
7. The immediate settlement of the taxed sum amounting to Kenya shillings one Million, Two Hundred and Forty- Seven Thousand, Four Hundred and Sixty-One and Fifteen Cents (Kshs. 1,247,461.15/=) would require Constitutional or County Legislation Approval which has not been given to the Respondent due to the closed budget cycle.
8. The closure of the budget cycle is beyond the Respondent's limit and/or intervention thus the delay in the said settlement.
9. The Respondent is currently not in a position to pay off the taxed sum since the County Government is in the middle of its financial year and such funds would have to have been provided for in the County Budget.
10. The Respondent is ready to pay once the same is allocated for, approved and passed by the County Assembly as provided in Section 125 of the [Public Finance Management Act, 2012](#).

Section 51(2) of the [Advocates Act](#) 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.”

21. This court is of the view that the grounds of opposition that the Respondent has raised are premature in the face of the prayers that the Applicant has sought. The respondent has not argued that the certificate of the taxing officer has been set aside or altered by the Court. The issue of the retainer does not arise. These are the only reasons or grounds that would lead the court to decline to grant the orders sought.
22. Rule 7 of the Advocates Remuneration Order provides: “An Advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered in full”



23. The Respondent has not challenged the issue of interest and the same is allowed within the framework of Rule 7 of the Advocates Remuneration Order.

**Determination:**

24. The court is satisfied that the Applicant has made out a case for the grant of the orders sought.

Order:

1. The Application is allowed.
2. Costs of this Application to the Applicant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY MARCH 2025**

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**J. CHIGITI (SC)**

**JUDGE**

