



**Prof Tom Ojienda & Associates v Music Copyright Society of Kenya (Miscellaneous Application E1039 of 2020) [2025] KEHC 2696 (KLR) (Civ) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2696 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS APPLICATION E1039 OF 2020  
RC RUTTO, J  
MARCH 7, 2025**

**BETWEEN**

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

**AND**

**MUSIC COPYRIGHT SOCIETY OF KENYA ..... RESPONDENT**

**RULING**

1. The applicant has filed a Notice of Motion dated 5<sup>th</sup> February 2024. It is based on the provisions of section 51 (2) of the *Advocates Act*. The Application seeks:
  1. That the Honourable Court be pleased to enter judgment for the applicant against the respondent for the sum of Kshs. 1,144,167.58 (Kenya shillings one million, one hundred and forty-four thousand, one hundred and sixty-seven and fifty cents only) as appears on the Certificate of Taxation dated 31<sup>st</sup> January 2024 together with interest from the date of filing the advocate-client bill of costs, that is from 12<sup>th</sup> October 2020, until payment in full;
  2. That the applicant be allowed to execute the judgment herein against the respondent;
  3. That the costs of this application be provided for.
2. The application is supported by the grounds on the body of the motion and the supporting affidavit of Prof. Tom Ojienda SC, the applicant's managing partner, sworn on 5<sup>th</sup> February 2024. The facts giving rise to the application are that the applicant was duly instructed by the respondent to file HCCC No. 138 of 2018; Music Copyright Society of Kenya vs. Music Publishers Association of Kenya Limited and another. The applicant filed a plaint dated 3<sup>rd</sup> April 2018. The same was accompanied by a verifying affidavit and an application of similar date. The applicant proceeded to render legal services but contended that it was not paid for them.



3. Consequently, the applicant filed its advocate client bill of costs dated 9<sup>th</sup> September 2020 seeking the sum of Kshs.62,474,495.60. The same was defended by the respondent who filed its affidavit in response dated 27<sup>th</sup> November 2020. In its ruling dated 9<sup>th</sup> July 2021, the taxing master assessed the bill of costs at Kshs.1,144,167.58. A Certificate of Taxation was issued on 31<sup>st</sup> January 2024.
4. The applicant urged this court to allow the application as the Certificate of Taxation has not been set aside or altered by any court. That there is no reason barring this court from granting the orders sought instead, if the orders are not granted, the applicant may not recover the sums due to it.
5. The respondent did not file any response. The application was heard on 20<sup>th</sup> November 2024. The court was satisfied that in spite of being duly served with the hearing date, the respondent chose not to be present. During the hearing the applicant wholly relied on its written submissions dated 1<sup>st</sup> November 2024 and the grounds embedded in its application urging this court to allow the application.
6. Section 51 (2) of the Advocates Act provides:
 

“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.”
7. In the ruling dated 9<sup>th</sup> July 2021, the taxing master taxed the applicant’s advocate-client Bill of Costs dated 9<sup>th</sup> September 2020 in the sum of Kshs.1,144,167.58. The applicant was issued with a Certificate of Taxation dated 31<sup>st</sup> January 2024. Notably there no evidence that the said decision has been challenged by way of reference or that the same has been varied or set aside. Further despite proof of service as contained in the Affidavit of Service sworn on 16<sup>th</sup> October 2014 by Kyalo Kamina the application has remained unopposed.
8. In view of the above and having evaluated the Application this court finds that the application merited. Accordingly, judgment is entered in favor of the applicant in the sum of Kshs.1,144,167.58 as against the respondent. The applicant shall also be awarded costs of this application and interest therein at the rate of 14% from the date the bill of costs dated 9<sup>th</sup> September 2020 was taxed, that is to say the 9<sup>th</sup> day of July 2021, until payment in full.
9. It is so ordered.

**DATED AND SIGNED AT MACHAKOS THIS 7<sup>TH</sup> DAY OF MARCH, 2025.**

**RHODA RUTTO**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 7<sup>TH</sup> DAY OF MARCH, 2025.**

In the presence of;

.....Applicant

.....Respondent

.....Court Assistant

