



Tom Ojienda & Associates v National Land Commission (Miscellaneous Civil Application E008 of 2025) [2025] KEHC 4511 (KLR) (9 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E008 OF 2025**

JRA WANANDA, J

APRIL 9, 2025

BETWEEN

TOM OJIENDA & ASSOCIATES APPLICANT

AND

NATIONAL LAND COMMISSION RESPONDENT

RULING

1. Before this Court for determination is the Applicants' Notice of Motion dated 15/01/2025 which seeks orders as follows:
 - i. That the Honourable Court be pleased to enter Judgment for the Applicant against the Respondent for the sum of Kshs. 9,374,003.33/= (.....) as appears on the Certificate of Taxation dated 27th December, 2024 together with interest, to run from one month of service of the Bill of Costs on the Respondent, that is from 24th February 2024, until payment in full.
 - ii. That this Honourable Court be pleased to order the Respondent to refund the Applicant the sum of Kshs 468,701/=, being a taxation fee of 5% as per Part 5 of the Second Schedule of the Court of Appeal Rules, 2022.
 - iii. That the costs of this Application be provided for.
2. The Application is supported by the Affidavit sworn by Prof. Tom Ojienda, SC, the Managing Partner in the Applicant law firm. He deponed that the Applicant filed a Party and Party Bill of Costs seeking the sum of Kshs 13,424,943.33 as costs due and owing to it from the Respondent, which Bill was served upon the Respondent on 24/01/2024, and was filed pursuant to the Ruling by the Court of Appeal in Civil Appeal No. E247 of 2023 between the parties herein. He deponed that at the Court of Appeal, the Respondent had filed an Appeal seeking to set aside and/vary a Ruling of the High Court, that subsequently, the Applicant successfully filed an Application to strike out the Appeal as. He urged that the Bill of Costs was, by the Ruling delivered on 28/03/2024, taxed at the sum of Kshs



9,374,003.33/-, and that the Respondent was aware of the Ruling as it same was served upon it but has not made any attempt to settle the amount. He deponed that the Applicant extracted the Certificate of Taxation dated 27/12/2024 and to do so, had to pay a fee of Kshs 468,701/- being 5% of the taxed amount in compliance with the Court of Appeal Rules. He urged that as the Certificate has not been set aside or altered, Judgment should be entered as prayed, and that the Applicant has been left to baby-sit orders awarding it costs for almost 1 year.

Hearing of the Application

3. When the matter came up in Court on 12/03/2025, it transpired that the Applicant had already filed the written Submissions dated 15/01/2025. Upon his request, the Respondent's Counsel, Mr. Mbuthia was then granted 7 days to file his Response and/or written Submissions. However, by the time that I concluded "writing" this Ruling, I had not come across any Submissions filed or on behalf of the Respondent, whether in the Court file or in the Judiciary Case Tracking System (CTS) online portal.

Applicant's Submissions

4. Prof. Ojienda SC, cited Section 51(2) of the [Advocates Act](#) and submitted that case law has established that once a Certificate of Taxation has been issued and the same has neither been set aside nor altered by any Court, then a Court should proceed to enter Judgment in favour of the Applicant. He cited the case of A.M. Kimani & Co. Advocates vs Kenindia Assurance Company Limited (2006) eKLR, and the case of Lubullelah & Associates v N.K. Brothers Limited [2014] eKLR. On the issue of interest payable on the costs, he cited Rule 7 of the Advocates Remuneration Order and also the case of Makhecha and Company Advocates vs Central Bank of Kenya [2020] eKLR and submitted that the Applicant is seeking interest from 29/03/2024 being 1 month from the date of service of the Bill in accordance with Rule 7 above, and that the claim for interest is being sought before payment or settlement of the costs. Counsel also submitted that it is trite that a litigant ought to be reimbursed for costs he has incurred in a case having been dragged to litigation. He cited the case of Premchand Raichand Ltd & Another v Quarry Services of East African Ltd & Others (No. 3) (1972) EA 162 and also the case of Republic vs Rosemary Wairimu Munene, Ex Parte vs Ihururu Dairy Farmers Co-operative Society Ltd.

Determination

5. The issue that arises for determination herein is "whether this Court should enter Judgment on the Certificate of Costs in issue".
6. On the issue of entry of a Judgment on a Certificate of taxed Costs, 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."

7. A reading of the above provision supports the Applicant's contention that once a Certificate of Taxation has been issued, and has neither been set aside nor altered by any Court, then the Court has no option but to enter Judgment thereon. Indeed, this principle has been reiterated in numerous cases.



I cite, for instance, the holding of Kamau J, made in the case *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR, in which she stated that:

“19. 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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the Applicant against the Respondent herein for the taxed sum indicated in the Certificate of Taxation ...”

8. In this case, the authenticity or enforceability of the Certificate of Costs relied on herein and dated 27/12/2024 has not been challenged. The retainer has also not been challenged. In the circumstances and in view of the express provisions of Section 5(1) above, I find that no ground has been presented to this Court to justify refusal to grant the prayer for entry of Judgment for the taxed amount

9. Regarding the prayer that the Respondent, in addition to the taxed costs, be also ordered to refund to the Applicant the sum of Kshs 468,701/- incurred by the Applicant in obtaining the Certificate of Costs, the Applicant has produced a copy of the Court Receipt to prove that indeed, it incurred the Court fee of Kshs 468,701/- to obtain the Certificate.

10. In respect to the prayer for interest, Rule 7 of the Advocates (Remuneration) Order provides that:

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

11. As provided in Rule 7 above, interest on taxed Party and Party costs which remains unsettled accrues from the lapse of 1 month from the date when the Bill of Costs was served (delivered) upon the client. In other words, there is a one-month grace period to the client to settle the costs failure whereof the Advocate becomes entitled to charge interest on the costs at 14% per annum once the Bill is subsequently filed and taxed.

12. In this case, the Applicant has in its Supporting Affidavit, deponed that it served the Bill of Costs upon the Respondent on 24/01/2024. This claim is indeed supported by a copy of the Affidavit of Service exhibited. Since the Respondent did not file any Response to the Application herein, the alleged date of service remains uncontroverted and I have no reason to doubt the truth thereof. Since the Applicant’s right to charge interest accrued upon lapse of 1 month after service, such interest is payable as from about 24/02/2024.

Final Orders

13. The upshot of my findings above is that the Applicants’ Notice of Motion dated 15/01/2025 is hereby allowed. Consequently, I order as follows:

i. Judgment is hereby entered in favour of the Applicant against the Respondent for the sum of Kshs 9,374,003.33/- the sum appearing on the Certificate of Taxation dated 27/12/2024 issued in Court of Appeal Civil Appeal No. E247 of 2022, together with interest thereon at the rate of 14% per annum, to run from one month after service of the Bill of Costs upon the Respondent, that is from 24/02/2024, until payment in full.



- ii. Additionally, the Respondent is hereby ordered to refund to the Applicant the sum of Kshs 468,701/-, being the Court fee incurred by the Applicant in obtaining the Certificate of Taxation.
- iii. The Applicant is also awarded the costs of this Application, to be borne by the Respondent.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 9TH DAY OF APRIL 2025.

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Msando h/b for Prof. Ojienda for the Applicant

N/A for the Respondent

Court Assistant: Brian Kimathi

