



**Republic v Baringo County Government & 2 others; KTK Advocates (Exparte) (Application 687 of 2017) [2023] KEHC 22516 (KLR) (Judicial Review) (25 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22516 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION 687 OF 2017  
J NGAAH, J  
SEPTEMBER 25, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**BARINGO COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY SECRETARY, BARINGO COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER, FINANCE/COUNTY TREASURER, BARINGO**

**COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KTK ADVOCATES ..... EXPARTE**

**RULING**

1. The applicant’s application is a motion dated 14 July 2022 expressed to be brought under sections 4(1), 5 (b) and 30(1) of the *Contempt of Court Act*, 46 of 2016 and sections 1A.1B and 3A of the *Civil Procedure Act* together with order 51 rule 1 of the *Civil Procedure Rules*. The prayers in the motion have been framed as follows:
  1. That, this application be certified urgent and service be dispensed with in the 1<sup>st</sup> instance.
  2. That, a notice to show cause does issue to the respondents, County secretary, chief officer-finance and County treasurer, to show cause why contempt of court proceedings should not be commenced against them for the disobedience of orders of this Honourable Court given on 28.01.22.



3. That, this Honourable Court does issue such orders as it may deem fit to grant in the interests of justice.”
2. The applicant has also asked for an order for costs.
3. The application is based on the affidavit of Donald B. Kipkorir sworn on 14 July 2022.
4. Mr. Kipkorir has sworn that he is an advocate of this Honourable Court and he practices in that capacity in the firm of KTK Advocates, which is the applicant in this application.
5. According to him, on 18 June 2017, the Deputy Registrar of this Honourable Court taxed his bill of costs against the respondent’s at 17,570,907.08. The respondent challenged the taxing master’s decision by way of reference on 15 June 2017. On its part, the applicant filed an application seeking judgment of the taxed amount.
6. The two applications were heard simultaneously and, by decision delivered on 24 July 2018, the applicant’s application was allowed. The applicant was then granted leave to file a judicial review application for the order of mandamus against the respondents in a bid to enforce the judgment. This application was allowed on 16 March 2022 on condition that parties were to take accounts and agree on the outstanding amount.
7. The applicant then filed and served upon the respondents what the deponent has referred to as “statement of accounts” dated 18 April 2022. The respondents neither responded to the statement of accounts nor attended the proceedings before the deputy registrar on 31 May 2022 to settle the accounts. Subsequently the applicant obtained a certificate of costs dated 8 June 2022 which, as far as I understand the applicant, the respondents have failed to settle.
8. It is for the foregoing reason that the applicant wants a notice to issue to the respondents to show cause why contempt proceedings should not be commenced against them.
9. The respondents opposed the application and filed a replying affidavit sworn by Francis Komen on 12 October 2022. Mr. Komen has introduced himself as the County secretary of the 1<sup>st</sup> respondent and that he has the authority to swear the affidavit on his own behalf and on behalf of the rest of the respondents.
10. Mr. Komen has sworn that the respondents have not willingly failed to settle the decretal sum and, as a matter of fact, a larger part of the decretal has been settled without resort to compelling orders from the court. And even before the order of 28 January 2022 was made, an undisputed sum of Kshs. 12,500,000/= had already been made together the contested sum of Kshs. 5,000,000/=.
11. As of 30 June 2020, Kshs. 16,000,500/= had been paid. Subsequently, a sum of Kshs. 1,000,000/= was paid. These amounts have not been acknowledged in the applicant’s ‘statement of account’.
12. According to Komen, the total decretal sum of Kshs. 17,500,000/= has been paid and all that is outstanding is the accrued interest which can be worked out by both parties.
13. In these circumstances, it has been urged, there is no plausible reason to warrant a notice to issue to the respondents to show cause why contempt of court proceedings should not be commenced against them.
14. In a ruling I rendered on 28 January 2022 which both the applicant and the respondents have made reference to I noted as follows:



Looking at the affidavits of both Kipkorir and Komen, there is nothing much that this court is called upon to resolve. The parties are in agreement that the decree which the applicant holds has only been partly settled.

15. The trouble with the applicant's application is that the outstanding amount is not specified and this would certainly present some difficulty in enforcing the order of mandamus if it is granted in the form in which it is sought. But as noted, the respondents do not deny owing the applicant. It is only that, like the applicant, they have not stated clearly how much of the decree is outstanding.
16. If only to bring to a halt the numerous litigations on this subject of settlement of the decree, I will issue the order of mandamus on condition that it will only be enforced once parties have taken accounts and agreed on the outstanding amount.
17. Parties will bear their respective costs. I hasten to add that considering the terms upon which the applicant's application has been allowed, parties will be at liberty to apply. Orders accordingly."
18. Any of the parties was granted liberty to apply in the event the court's intervention was required in the process of enforcement of the court order.
19. The phrase 'liberty to apply' was employed here in its technical sense. It was explained in [\*Cristel v Cristel\*](#) - [1951] 2 All ER 574 where Devlin J defined it as follows:

"Prima facie, "liberty to apply" is expressed very often--and, if it is not expressed, it will be implied--where the order that is drawn up requires working out and the working out involves matters on which it may be necessary to get the decision of the court. Prima facie, certainly, it does not entitle people to come and ask that the order itself shall be varied. (Emphasis added)."
20. I made this specific order because, as I noted, both parties were in agreement that the decree had not been fully settled but none was coming out clearly on the outstanding amount. Thus, the outstanding amount had to be 'worked out,' to use Devlin, J's phrase, in order for the mandamus order to be enforced. And, if for some reason, the parties could not work it out, they were to come back to court for a determination to be made prior to enforcement of the order of mandamus.
21. Now, if the court had to make a determination on the aspects of the order, it is the judge, and not the deputy registrar who court possibly make that determination. By making the order for 'liberty to apply', the court did not thereby cede its judicial authority to the deputy registrar.
22. Certainly, the court did not direct any of the parties to appear before the deputy registrar to resolve any misunderstanding that may require the determination of this Honourable Court.
23. It follows that the application by the applicant before the deputy registrar was a non-starter.
24. And even if the deputy registrar had a basis to intervene, there is no legal basis upon which she could possibly have issued a 'certificate of costs' which, by and large, is what the applicant is seeking to enforce in the instant application. The purported certificate reads as follows:

### **Certificate of Costs**

25. I, Hon. Emmie Chelule the deputy registrar of the High Court of Kenya at Nairobi, do hereby certify that the statement of account dated April 18, 2022 lodged by KTK Advocates for the ex parte applicant was taxed in this suit as between advocate and client on 31st May, 2022 and allowed as against the



respondents in the sum of Kenya Shillings Nineteen Million Nine Hundred and Seventy-Four and Forty-Six Cents (Kshs. 19,946, 374.46) only.

Issued at Nairobi this 8th June 2022

Deputy Registrar

High Court of Kenya, Nairobi”

26. First and foremost, the statement that there was a taxation “as between advocate and client on 31<sup>st</sup> May, 2022” is factually erroneous. There is no evidence on record that an advocate/client bill of costs had either been filed or taxed on the material date. On this particular date, Mr. Kipkorir appeared before the learned Deputy Registrar in the absence of the respondents’ counsel. Apparently, the respondents’ counsel had been served but did not appear. Mr. Kipkorir is recorded to have addressed the Deputy Registrar as follows:

“The matter was for reconciliation of accounts pursuant to the ruling by Hon. J. Ngaah. We have filed the statements of accounts. We served the same and have filed our affidavit of service. We pray that the same be confirmed.”

27. It is evident from Mr. Kipkorir’s submission that what was before the deputy registrar was “a statement of accounts” and not a bill of costs for taxation. As to whether a statement of accounts could be presented before the Deputy Registrar as an application for determination is another question altogether but the point here is, contrary to what is represented in the ‘certificate of costs’, there was no taxation on 31 May 2022.

28. Be that as it may, the Deputy Registrar then proceeded to make a ruling, noting that the applicant had, in its statement of accounts, sought Kshs. 19,946,374.46 as the outstanding amount. She also noted that there was nothing filed by the respondents in opposition to the applicant’s “statement of accounts”. The Deputy Registrar then allowed the applicant’s application and stated that “the statement of account dated 18/4/ 2022 is hereby confirmed and the file marked as closed.”

29. Assuming that there was bill of costs which the Deputy Registrar had duly taxed, the ensuing document which she could possibly issue was a certificate of taxation and not a certificate of costs. The latter is issued under paragraph 68A of the Advocates Remuneration Order. It reads as follows:

68A. Certificate of costs.

- (1) Notwithstanding anything to the contrary in this Order, when the Registrar of the High Court enters final judgement under Order XLVIII, rule 2 of the Civil Procedure Rules, he may, on application in writing and without the filing or taxation of a bill of costs or of notice to any party, sign a certificate of the costs of the suit calculated in accordance with item 15 of Schedule VI.
  - (2) An advocate may, in any case in lieu of taxation, apply in writing for a certificate under this paragraph.
  - (3) If the Registrar refuses an application under this paragraph he shall on request certify his refusal in writing to the applicant and the applicant may within fourteen days of receipt of the certificate give notice of objection, whereupon paragraph 11 shall apply.
30. There was obviously no final judgment that the Deputy Registrar had entered under the Civil Procedure Rules and neither had any application been made for a certificate of costs to issue as an



alternative to filing a bill of costs. Thus, the purported certificate of costs was not only deficient of legal basis but was also contrary to the provisions of paragraph 68A of the Advocates Remuneration Order.

31. What all these boil down to is that the applicant's application is misconceived. It is hereby dismissed. Owing to the fact that the respondents have admitted that there is still some amount due to the applicant in settlement of the decree, I make no order as to costs. Orders accordingly.

**SIGNED, DATED AND DELIVERED ON 25 SEPTEMBER 2023**

**NGAAH JAIRUS**

**JUDGE**

