



**Republic v County Government of Laikipia; Maina & Onsare
Partners Advocates (Exparte Applicant) (Judicial Review Application
E002 of 2022) [2024] KEHC 11956 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
JUDICIAL REVIEW APPLICATION E002 OF 2022
AK NDUNG’U, J
OCTOBER 8, 2024**

**IN THE MATTER OF AN APPLICATION FOR
LEAVE TO APPLY FOR AN ORDER OF MANDAMUS
AND IN THE MATTER OF SECTION 21 (1) & (3)
OF THE GOVERNMENT PROCEEDINGS ACT**

AND

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES 2010

AND

**IN THE MATTER OF ARTICLE 48 AND 159 (2) (A)
(B) & (D) OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF LAIKIPIA RESPONDENT

AND

MAINA & ONSARE PARTNERS ADVOCATES EXPARTE APPLICANT



RULING

1. That an order of Mandamus be directed to the Respondent, the County government of Laikipia to pay costs totaling Kenya Shilling Seven Hundred and Twenty Eight Thousand Five Hundred and Seventy Five and Sixteen Cents (Kshs.728,575.16/-).
2. That in default of compliance with the prayer above, the County Attorney of the Respondent be imprisoned and committed to civil jail for a period of not less than six (6) months.
3. That the costs of this application be provided for.

The application based on grounds that:-

- a. The Advocate – Client relationship between the Ex-parte Applicant and the Respondent deteriorated forcing them to cease acting in Nanyuki HCCC No.2 of 2017 – Legend Petroleum Equipment’s Limited versus the County Government of Laikipia.
- b. The Respondent failed to settle the Ex-Parte Applicant’s professional fees and it resulted to tax its costs.
- c. The Taxing Master assessed the costs at Kshs.728,575.16/= which amount remains due and owing.
- d. Despite the Respondent being duly represented during the taxation proceedings and being made aware of the award on costs it has refused, failed and/or ignored to settle the same.
- e. The Respondent has to date not challenged the Certificate of Taxation.
- f. The Ex-Parte Applicant continues to be denied what is rightfully owed to it despite the Respondent having derived a benefit from the services rendered.

It is supported by the statutory statement and affidavit dated 14th September, 2024 sworn by Ivy Ngui herein.

4. The application is opposed. Whereas the Respondent does not deny that it is indebted to the Applicant, the replying affidavit filed largely dwells on the Respondent’s inability to pay owing to budget constraints despite the County Attorney having taken all the necessary steps to initiate payment.
5. In its submissions, the Respondent maintains that the County Attorney cannot be committed to civil jail for the indebtedness having fulfilled his obligation and the omission being on the part of other departments to release the funds.
6. A cursory look at the application reveals a glaring procedural omission on the part of the Applicant. A certificate of costs is not executable as a decree. The applicant needed to move the court for entry of judgement in terms of the certificate of costs.
7. The jurisdiction of this Court to enter judgment for the sum certified to be due to an advocate upon taxation of a bill of costs is contained in the [Advocates Act](#) and the Advocates Remuneration Order. Section 51(2) of the [Advocates Act](#) provides as follows:

‘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”.

8. The certificate of taxation dated 17.3.20 that was issued by the taxing officer in favour of the Applicant herein has neither been set aside nor altered by the Court. As per the foregoing provision, the certificate of costs is final as to the amount contained therein. Section 51(2) empowers the Court to make such order as it thinks fit, including an order that judgment be entered for the sum certified to be due with costs.
9. The Applicant has omitted this crucial step and therefore the Certificate of Costs cannot be by itself executed as a decree.
10. Another obvious flaw in the Judicial Review application is on the misjoinder of the County Attorney as the target officer in the enforcement of the decree. The right party when it comes to execution against the Government is the Accounting officer and not other officers working in the Government.
11. For these reasons, the application is a non-starter and is dismissed. The Applicant is at liberty to move the court appropriately. In the circumstances of this case, and noting the Applicant is duly owed by the Respondent, I direct that each party bears their own costs.

DATED SIGNED AND DELIVERED THIS 8TH DAY OF OCTOBER 2024

A.K. NDUNG’U

JUDGE

