



**Waweru Gatonye & Company Advocates v Tana & Athi Rivers  
Development Authority (Environment and Land Miscellaneous Application  
E001 of 2025) [2025] KEELC 6505 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6505 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025  
FM NJOROGE, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**WAWERU GATONYE & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**TANA & ATHI RIVERS DEVELOPMENT AUTHORITY ..... RESPONDENT**

**RULING**

1. Costs in favour of the applicant were taxed on 3/2/2025 and certified by the Deputy Registrar and a certificate of taxation issued in the sum of Ksh. 6,989,002.31 issued on 6/3/2025.
2. The applicant filed the Notice of Motion application dated 25/4/2025 which is the subject of this ruling seeking the following orders: -
  1. .... Spent;
  2. That this honourable court be pleased to enter judgment in favour of the applicant in terms of the certificate of taxation dated 6<sup>th</sup> March 2025 in the sum of Kshs. 6, 989,002.31 (Kshs. Six Million Nine Hundred and Eighty-Nine Thousand and Two and Thirty-One Cents Only) being costs taxed by the Honourable Deputy Registrar in ELC MISC No. E044 of 2024;
  3. That this honourable court be pleased to enter judgment in prayer 2 above together with interest at court rates from date of taxation until payment in full;
  4. That costs of this application be provided for.
3. The application was supported on the grounds set out on the face of the application and on the annexed affidavit sworn in support of the same by Munyalo Nthuli advocate. Inter alia, the applicant averred he had been retained by the respondent to represent it in Malindi ELC Petition No. 2 of 2015 but the respondent failed to pay its fees, prompting the applicant to file an advocate-client bill of costs in ELC



MISC No. E044 of 2024. The said bill was taxed on 3/2/2025 at Kshs. 6,989,002.31. The applicant has since extracted the certificate of costs, which has not been challenged or set aside. The applicant added that the certificate was served on the respondent but the same remains unsettled. The applicant states that it is in the interest of justice that the application is granted.

4. The respondent filed a replying affidavit sworn by Maureen Oloo on 27/5/2025. The deponent stated that the application is premature and mala fide since the respondent informed the applicant of its predicament in being constrained to meet its financial obligations. She added that in good faith and to demonstrate its willingness to settle the costs, the respondent has since requested its line ministry requesting for support to settle the amount. The deponent stated that the respondent intends to settle the amounts awarded to the applicant but only requires time. She urged the court to dismiss the application as it has not been filed in good faith.

### **Analysis and Determination**

5. The issue for determination is whether the applicant is entitled to judgment in terms of the certificate of taxation dated 6/3/2025, together with interest and costs of the application.
6. It is not disputed that the applicant was retained by the respondent to represent it in Malindi ELC Petition No. 2 of 2015. It is also not in dispute that an advocate–client bill of costs was filed, taxed, and a certificate of taxation issued by the Deputy Registrar on 6/3/2025 in the sum of Kshs. 6,989,002.31. The certificate of taxation has not been challenged, reviewed, or set aside.
7. Under Section 51(2) of the *Advocates Act*, once a certificate of taxation is issued and remains unchallenged, the advocate is entitled to judgment for the taxed amount. The provision states:

“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...”

8. In the present case, the respondent has not filed any reference to challenge the certificate of taxation under Rule 11 of the Advocates (Remuneration) Order. The only response has been an affidavit expressing financial hardship and a plea for more time to pay, which does not amount to a valid legal challenge to the taxed costs.
9. Courts have consistently held that once a certificate of costs is issued and is unopposed, the advocate is entitled to judgment. See for instance *Amondi & Co Advocates v County Government of Kisumu* [2021] eKLR where the court stated that:

“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 -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.

8. In the instant application the Respondent has not disputed the cost between it and the applicant which were taxed on 8th July 2020 at Kshs. 1,922,708.00



and a certificate of costs issued. The court has not been notified of a pending reference and/or any objection to the taxation under Rule 11 of the Advocates Remuneration Order and in those circumstances I see no bar to entry of judgment in terms of the certificate of costs.”

10. The respondent’s assertion that it is financially constrained and has requested support from its parent ministry does not constitute a legal ground to deny the applicant judgment. The court must enforce legal obligations when requested. That is its mandate. The respondent’s financial capacity does not extinguish the applicant’s right to be paid for professional services rendered. In view of the foregoing, I am satisfied that the application is merited. The applicant has demonstrated that the certificate of taxation has not been set aside and that it is entitled to judgment.
11. On the issue of interest, Rule 7 of the Advocates Remuneration Order provides when interest may be paid on costs as follows: -
  - “7. An advocate may charge interest at 14% per annum on his disbursements and costs, whether by scale or otherwise from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full.”
12. In the instant case, the respondent was served with the certificate of taxation and has since failed to settle the same. The respondent ought to pay interest on the costs as from the date of taxation until the payment is made in full.
13. In the end, I allow the Notice of Motion dated 25/4/2025 and make the following orders: -
  - a. Judgment is entered for the Applicant against the Respondent for the taxed costs of Kshs. 6,989,002.31 as certified in the certificate of taxation dated 6/3/2025 with interest at 14 % per annum from 3/2/2025 until payment in full;
  - b. I make no orders as to costs regarding this application.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

