

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELCL MISC E007 OF 2025

DICKENS OUYA(Suing as the personal representative of the Estate of the late Faith Judith Ouya.....

APPLICANT

VERSUS

PURITY WANGUI KURIA.....**1ST**

RESPONDENT

ESTHER GATHONI GICIMU(As the personal representative of the Estate of the late Uwe Kerschek).....**2nd**

RESPONDENT

RULING

1. By a notice of motion of motion dated 24.01.2025 filed pursuant to *Section 51 (2) of the Advocates Act Cap 16 Laws of Kenya, Order 51 Rule 1 Civil Procedure Rules 2010, Section 3A Civil Procedure Act and all other enabling provisions of the law*, the applicant sought the following orders;

- a. *That the certificate of taxation dated 15.12.2023 and issued in Mombasa Court of Appeal No. 64 of 2019 Dickens Ouya & Another vs Esther Gathoni Gicimu & Another be converted into a judgment and decree of this honourable court.*

b. That the costs of this application be provided for.

2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Abidha Nicholus on 24.01.2025. In a nutshell, the applicant wanted the certificate of taxation issued in his favour on 15.12.2023 to be converted into a judgment to enable him to execute for recovery of the taxed costs. He annexed a copy of the taxing officer's ruling on taxation and the resultant certificate of taxation to the application.
3. The material on record shows that the 2nd respondent filed grounds of opposition dated 24.06.2025 in opposition to the applicant's motion. The only ground raised therein was that the application was incompetent and bad in law because Section 51(2) of the Advocates Act (Cap 16) was inapplicable. There is, however, no indication on record of the 1st respondent having filed a response to the application.
4. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the applicant filed written submissions dated 27.06.2025

and supplementary submissions dated 22.08.2025. The 2nd respondent filed her submissions dated 05.08.2025 but the 1st respondent did not file any submissions.

5. The court has considered the material and submissions on record. The court is of the opinion that the sole issue for determination is whether or not the applicant has made out a case for entry of judgment in terms of the certificate of taxation issued by the taxing officer.

6. Section 51(2) of the Advocates Act stipulates that;

“The certificate of the taxing officer 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 orders in relation thereto as it thinks fit, including in the case where the retainer is not disputed an order that judgment be entered for the sum certified to be due costs.”

7. The court is satisfied that the application before court was properly filed pursuant to the said section since the costs of the interlocutory appeal were taxed and certified by the taxing officer. There is nothing else pending before the Court of Appeal in that regard and the applicant is not obliged to await the hearing and determination of the primary suit pending before the Environment and Land Court. The court is not satisfied that there

is any lawful justification or excuse to prevent the applicant from seeking enforcement of the costs awarded in his favour.

8. The upshot of the foregoing is that the court finds merit in the applicant's motion for judgment on the certificate of taxation. Consequently, the court makes the following orders for disposal of the motion dated 24.0.1.2025;

a. That the certificate of taxation dated 15.12.2023 issued in Mombasa Civil Appeal No. 64 of 2019 - Dickens Ouya & Another vs Esther Gathoni Gicimu & Another be and is hereby converted unit a judgment of the court.

b. That the applicant is hereby awarded costs of the application.

Orders accordingly

Ruling dated and **signed** at **Mombasa** and **delivered** virtually via Microsoft Teams on this 30th day of October 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Abidha for the applicant

No appearance for th4 1st respondent

Ms. Manyala for the 2nd respondent

ORIGINAL