



**Tom Ojienda & Associates v County Government of Nairobi (Environment & Land Miscellaneous Case 83 of 2018) [2024] KEELC 1616 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1616 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE 83 OF 2018  
EK WABWOTO, J  
MARCH 20, 2024**

**BETWEEN**

**TOM OJIENDA & ASSOCIATES ..... ADVOCATE**

**AND**

**COUNTY GOVERNMENT OF NAIROBI ..... CLIENT**

**RULING**

1. By a Notice of motion dated 6<sup>th</sup> September 2023, brought under Section 51(2) of the [Advocates Act](#), the Applicant sought the following orders:
  - i. ....Spent.
  - ii. That the Honourable Court be pleased to enter judgment for the Applicant against the Respondent for the sum of 6,198,454.20 (Kenya Shillings Six Million one hundred and ninety eight thousand, four hundred and fifty four and two cents only) as appears on the Certificate of Taxation dated 23<sup>rd</sup> October 2019 with interest from the date of filing this Application until payment in full.
  - iii. That the Applicant be allowed to execute the judgement herein against the Respondent the County Government of Nairobi.
2. The application was accompanied by a Supporting affidavit sworn by Prof, Tom Ojienda, SC outlining the following grounds:
  - a. THAT the Applicant filed an advocate-client bill of costs dated 21<sup>st</sup> May 2018. The bill arose out of a court judgement in the parent filed of ELC Case no 218 of 2015.
  - b. The Applicant sought Kshs 55,437,009.50 against the Respondent. The Respondent was duly served with the Bill of Costs. It entered appearance and was given time to make its arguments as to why the Bill should not be taxed as drawn.



- c. Vide a ruling delivered on 29<sup>th</sup> August 2019, the bill was taxed at Kshs 6.198,454.20.
  - d. The Certificate of Taxation was issued and has never been altered nor set aside by any Court.
  - e. The Applicant is apprehensive that if the not heard urgently and the orders sought, then the Applicant may not recover the sums due to it by the Respondent.
3. The application was canvassed by way of written submissions pursuant to the directions issued by this court on 4<sup>th</sup> October 2023. The Applicant filed a further affidavit dated 18<sup>th</sup> October 2023 and submissions dated 26<sup>th</sup> October 2023. In the affidavit, it was averred that there was a typographical error in the Applicant's application, this is specific to the date of the Bill costs which had been referred to as 21<sup>st</sup> May 2018 but was actually 26<sup>th</sup> April 2018.
  4. The Applicant confirmed that Kshs 25,000,000 had been paid out as legal fee note of Kshs 40,000,000. It was submitted that the Respondent's failure to settle the balance necessitated the Bill of Costs which was eventually taxed at 6,198.454.2. It was argued that the details of Kshs 25,000,000 is a new fact that emerged out of the Respondent's replying affidavit dated 3<sup>rd</sup> October 2023 and had not been raised during taxation.
  5. In opposition to the application, the Respondent filed a replying affidavit sworn by Wasonga Ogola dated 3<sup>rd</sup> October 2023 and submissions dated 23<sup>rd</sup> January 2024. In addition to stating that there existed no bill of costs dated 21<sup>st</sup> May 2018, it was also stated that the bill of costs had already been settled when payment of Kshs 25,000,000 was made on 23<sup>rd</sup> May 2016. It was further argued that the Applicant actually owed the Respondent Kshs 18,801,545.80.
  6. Having considered the application, rival affidavits and submissions filed herein this court is of the view that the only issue for determination herein is whether the application seeking entry of judgment is merited.
  7. Having perused the Taxing Master's ruling dated 29<sup>th</sup> August 2019, I agree with the Applicant that the issue of part payment of Kshs. 25,000,000 by the Respondent was neither pleaded nor argued. The Court in this instance is fairly restricted in its mandate and cannot consider new facts.
  8. In view of the foregoing, I hereby find merit in the application dated 6<sup>th</sup> September 2023 and the same is hereby allowed in terms of prayers (ii) and (iii). There shall be no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF MARCH 2024.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

Ms. Misando h/b for Prof. Ojienda S. C. for the Applicant.

Mr. Thuo for the Client/Respondent.

Court Assistant; Caroline Nafuna.

