



**Tom Ojienda & Associates v County Government of Nairobi (Environment and Land Miscellaneous Case E135 of 2021) [2024] KEELC 3952 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3952 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E135 OF 2021  
EK WABWOTO, J  
APRIL 30, 2024**

**BETWEEN**

**PROF TOM OJIENDA & ASSOCIATES ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF NAIROBI ..... RESPONDENT**

**RULING**

1. By a Notice of motion dated 5<sup>th</sup> December 2023, brought under Section 51(2) of the [Advocates Act](#), the Applicant sought the following orders:
  - i. That the Honourable Court be pleased to enter judgment for the Applicant against the Respondent for the sum of Ksh 716,758.20 (Kenya Shillings Seven Hundred and Sixteen Thousand, Seven Hundred and Fifty Eight shillings and Twenty cents) as appears on the Certificate of Taxation dated 17<sup>th</sup> November 2023 together with interest from the date of filing this Application that is from 15<sup>th</sup> July 2021 until payment in full.
  - ii. That the Applicant be allowed to execute the judgement herein against the Respondent, the Nairobi City County herein.
  - iii. That the costs of this Application be provided for.
2. The application was accompanied by a Supporting affidavit sworn by Prof, Tom Ojienda, SC outlining the following grounds:
  - a. That the Applicant represented the Respondent in ELC No 156 of 2015; [Vinemag Enterprises vs Airport view Housing Ltd, Nairobi City County & 4 others](#).
  - b. That the Applicant filed an advocate-client bill of costs dated 6<sup>th</sup> July 2021 seeking Ksh 8,912,679.40/= as legal fees due and owing to it by the Respondent in ELC Case No 156 of 2015 where the Respondent failed to pay the Applicant for legal services rendered.



- c. That pursuant to a ruling delivered on 9th December 2021, the Advocate – Client Bill of costs was taxed at Kshs 716,758.20 /=
  - d. That the Client/Respondent was well aware of the existence of the bill of costs, having been served with the same and invited severally to attend Court. Further, the respondent was represented by the firm of Rene & Hans LLP Advocates who entered appearance.
  - e. That the Taxing officer also issued a Certificate of Taxation dated 17th November 2023 in favour of the Applicant against the Respondent for the sum of Kshs 716,758.20/= in respect of the ruling delivered on 9th December 2021.
  - f. That the Certificate of Taxation has not been set aside or altered by any Court of competent jurisdiction and there is therefore no reason why the Court should not enter judgement against the Respondent.
  - g. That there were no outstanding issues left for determination herein, and it is therefore fair, just and equitable that this Application be granted in the interest of justice.
3. On 12th February 2024, the Court directed that the application be canvassed by way of written submissions. The parties were granted time lines to file and exchange their written submissions.
  4. The Applicant filed submissions and a further affidavit both dated 28<sup>th</sup> February 2024 in which the case of *Gichuki Kingar'a & Company Advocates vs Mugoya Construction & Engineering Limited* [2015] eKLR was relied upon to prove that the three key requirements under Section 51(2) *Advocates Act* had been satisfied;
    - a. There is a certificate of taxation issued by the taxing officer
    - b. The certificate of taxation has not been set aside or altered by the Court and;
    - c. That there is dispute on the retainer.
  5. The Applicant further relied on the cases involving *A.M. Kimani & Company Advocates vs Kenindia Assurance Company Ltd* (2006) eKLR and *Lubulellah & Associates Advocates v N K Brothers Limited* [2014] eKLR to further the assertions that where the certificate of taxation has not been altered, the certificate is final as to the amounts of costs. Furthermore, it was submitted that is so far as the Respondent had not provided the court with any proof that the certificate of costs was set aside, then the court would have no further option but be persuaded by the Applicant's submissions and consequently enter judgement as prescribed under Section 51(2) of the *Advocates Act*.
  6. The court notes that the Applicant's further affidavit dated 28<sup>th</sup> February 2024 was filed without leave of the Court and the same has not been considered by the Court in its ruling since the Respondent has not had a chance to respond to the same.
  7. With regards to the issue of costs and interest, the Applicant relied on the cases involving *Makhecha and Company Advocates vs Central Bank of Kenya* [2020] eKLR and Republic v Rosemary Wairimu Munene vs Ihururu Dairy Farmers Co-operative Society Ltd and urged the Court to take into consideration the trouble that the Applicant went through to recover the sums due.
  8. Having considered the written submissions and supporting documents, I have determined that the only issue for determination herein is whether the application seeking entry of judgment is merited.



9. This Court is undoubtedly guided by Section 51 (2) of the *Advocates Act* which provides that:

“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.”

10. In this matter, I have reviewed the Taxing Master’s ruling in which both parties put in submissions which were considered together with the court record. Furthermore, I find that the respondents was properly served with the certificate of taxation and the Taxing Master’s ruling and as such having not disputed the certificate of taxation issued on 17<sup>th</sup> November 2023, this court will therefore enter judgment against the Respondent.

11. It is a well-establish practise that the issue of costs is a reserve for the courts discretion. In this instance, I have considered that this case stems from a case filed in 2015. It is upon this Court to ensure expeditious dispensation of justice to ensure that litigation comes to an end. In view of the foregoing, I hereby find that the Notice of Motion application dated 5<sup>th</sup> December 2023 is merited and the same is hereby allowed in the following terms:

- a. Judgment is hereby entered in favour of the Applicant against the Respondent for the sum of Ksh 716,758.20 (Kenya Shillings Seven Hundred and Sixteen Thousand, Seven Hundred and Fifty Eight shillings and Twenty cents) as appears on the Certificate of Taxation dated 17<sup>th</sup> November 2023.
- b. The claim of interest is declined.
- c. Each party to bear its own costs of the application.

12. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2024.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

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

**N/A for the Client/Respondent.**

**Court Assistant; Caroline Nafuna.**

