



**Tom Ojienda & Associates v County Government of Nairobi (Environment & Land
Miscellaneous Case E134 of 2021) [2024] KEELC 3513 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3513 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E134 OF 2021**

EK WABWOTO, J

APRIL 30, 2024

BETWEEN

PROF. TOM OJIENDA & ASSOCIATES ADVOCATE

AND

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. By a Notice of motion dated 5th 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 708,441/= (Kenya Shillings Seven Hundred and Eight Thousand, four hundred and forty one) as appears on the Certificate of Taxation dated 17th November 2023 together with interest from the date of filing this Application that is from 16th 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. 17 of 2015; Airport view Housing Ltd v Nairobi City County.
 - b. That the Applicant filed an advocate-client bill of costs dated 5th July 2021 seeking Ksh 8,860,421.50/= as legal fees due and owing to it by the Respondent in ELC Case No 17 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 708,441 /=-
 - d. 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 708,441/= in respect of the ruling delivered on 9th December 2021.
 - e. 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.
 - 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. The Applicant filed submissions and a further affidavit both dated 28th February 2024 in which the case of *Gichuki Kingar'a & Company Advocates v 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.
 4. The Applicant further relied on the cases involving *A.M. Kimani & Company Advocates v Kenindia Assurance Company Ltd* (2006) and *Lubulellah & Associates Advocates v NK 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 as long as the Respondent did not provide 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*.
 5. With regards to the issue of costs and interest, it was submitted that the Court should take into consideration the trouble the Applicant went through to recover the sums due and such costs with interest as prayed was fairly due.
 6. The court notes that the Applicant's further affidavit dated 28th 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. 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.
 8. This Court is undoubtedly guided by Section 51 (2) of the *Advocates Act*.
 9. 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. There was no objection to the application. The certificate of taxation and the Taxing Master's ruling have not been disputed and as such this court will therefore enter judgment against the Respondent.



10. The issue of costs is ultimately within the court's discretion. In this instance, I have considered the outcome of the case vis a vis the lengthy period of the trial process which stemmed from a case filed in 2015. In view of the foregoing, I hereby find that the Notice of Motion application dated 5th 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 708,441 (Kenya Shillings Seven Hundred and Eight Thousand, Four Hundred and Forty One) as appears on the Certificate of Taxation dated 17th November 2023.
 - b. The claim of interest is declined.
 - c. Each party to bear its own costs of the application.
11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Misando for the Advocate/Applicant.

N/A for the Client/Respondent.

Court Assistant; Caroline Nafuna.

