



REPUBLIC OF KENYA



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Manyonge Wanyama & Associate LLP v Kisii County Government (Miscellaneous Case E042 of 2025) [2025] KEELRC 2071 (KLR) (14 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2071 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CASE E042 OF 2025**

JK GAKERI, J

JULY 14, 2025

BETWEEN

MANYONGE WANYAMA & ASSOCIATE LLP APPLICANT

AND

KISII COUNTY GOVERNMENT RESPONDENT

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 8th May, 2025 seeking Orders that:
 1. The Certificate of Taxation issued on 20th March, 2025 in Kisumu Misc. Application No. E049 of 2022 *Manyonge Wanyama & Associates LLP v Kisii County Government* be adopted as a Judgment and decree of this court and Judgment be entered for the Applicant against the respondent Kshs.378,563.00
 2. The Applicant be allowed to execute the Judgment herein against the respondents, the County Secretary, County Government of Kisii, Chief Finance Officer, County Government of Kisii and the CEC Member for Finance County Government of Kisii.
 3. The costs of this Application be awarded to the Advocate/ Applicant.
2. The Notice of Motion is expressed under Section 51(2) of the *Advocates Act* and is based on the grounds set out on its face and the Supporting Affidavit of Peter Wanyama Advocate who deposes that the Advocate-Client Bill of costs dated 14th September, 2022 in Kisumu Misc. App No. E049 of 2022 was initially taxed by Hon. Beryl Omollo and was subsequently re-assessed by Hon. Fatuma Rashid pursuant to a court order, who *vide* Ruling delivered on 17th March, 2025 assessed the same at Kshs.378,563 and issued a Certificate of Taxation dated 20th March, 2025, for the sum of Kshs.378,563 which has not been set aside and there were not issues pending determination.



3. The affiant further deposes that demand notwithstanding the amount remained unpaid and the law firm was being denied the fruits of her judgment.

Response

4. In a Replying Affidavit sworn by Anne Githinji on 16th June, 2025, the affiant objected to execution against the County Secretary and County Executive Member and workers of the County Government of Kisii.
5. The affiant deposed that execution orders and adoption of the Certificate of Costs ought not be done simultaneously and execution Orders could only issue against the Chief Officer and upon failure to pay.
6. Finally, the affiant deposed that the orders sought by the Applicant were premature and an abuse of court process and the same should be dismissed.

Applicant's submissions

7. Also to whether the court should enter into judgment the Certificate of Taxation issued in KISUMU MISC. APP. NO. E049 OF 2022, reliance was placed on the provisions of Section 51(2) of the *Advocates Act* as well as the sentiments of the Court in *Lesinko Njoroge & Gathogo Advocates v Invesco Co. Ltd* [2021] eKLR, *Wilfred Nyaundi Konosi t/a Konosi & Co. Advocates v John Lokorio* [2015] eKLR and *Gordon F. O. Ogola & Another v Gideon Kipkoech Ngetich* [2020] eKLR to urge that the role of the court was to enter judgment upon application.
8. By 26th June, 2025, the respondents had not filed submissions.
9. The Applicant's Notice of Motion is based on Section 51(2) of the *Advocates Act* which provides that:

The certificate of the taxing officer to whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of costs covered thereby and the court may make such order in relation thereto as it thinks fit, including in a case where retainer is not disputed an order that judgment be entered for the sum certified to be due with costs.
10. As correctly submitted by the applicant and as amplified by the sentiment of courts in the decisions cited, after the certificate of costs is issued and the costs taxed and the same has neither been set aside nor appealed against and the retainer is undisputed, the role of the court is to enter judgment upon application in consonance with the provisions of Section 51(2) of the *Advocates Act*.
11. In *Lesinko Njoroge & Gathogo Advocates v Invesco Assurance Co. Ltd* (*supra*) Gikonyo J expressed himself as follows:

“The procedure provided in Section 51(2) of the *Advocates Act* aids expeditious disposal of cases relating to recovery of Advocates-client costs as long as (1) the costs have been taxed and certified under the hand of the taxing master by a certificate of cost; (2) the certificate of costs has not been set aside or stayed or appealed against on a reference filed upon it; and (3) there is no dispute on retainer. In such a case a Judgment is ordinarily entered in the sum in the certificate of costs upon application by the advocate. The application may be commenced by way of Notice of Motion which in law is potent tool for originating a suit”.



12. Similarly, in *Wilfred Nyaundi Kononi t/a Konosi and Co. Advocates v John Lokorio* (*supra*), Mulwa J. stated:

“Once a certificate of costs is issued and has not been set aside or altered, no other action would be required from the court save to enter Judgment upon application”.

13. The court is in agreement with these sentiments.

14. In the instant application it is common ground that vide letter dated 15th July, 2022, the solicitor of the County Government of Kisii instructed the Applicant law firm to represent Gusii Water and Sanitation Co. Ltd, the CECM, Water Environment and Natural Resources in ELRC Kisumu E001 of 2022 *Vincent Omaso & Kennedy v Kisii County Government & 10 others* and the Applicant law firm acted accordingly.

15. It is equally not in dispute that the respondents successfully objected to the previous assessment of the Bill of costs by Hon. Beryl Omollo and the same was re-assessed by Hon. F. Rashid at Kshs.378,563.00 and issued a Certificate of Taxation dated 20th March, 2025, which the applicant seeks adoption as Judgment of the court.

16. Finally, Mr. Peter Wanyama Advocate deponed that the Certification of Taxation had neither been altered nor appealed against or varied and there were no issues pending determination.

17. Significantly, the respondent’s objection that adoption of the Certificate of Taxation and execution were distinct process has merit. This is because execution against the National or County Government or department is governed by the provisions of the *Government Proceedings Act* and is particular the provisions of Section 21 of the Act.

18. Flowing from the foregoing, it is discernible that the Applicant’s Notice of Motion dated 8th May, 2025 has merit; and

a. The Certificate of Taxation dated 20th March, 2025 is adopted as an Order of this court and Judgment entered in favour of the Applicant against the respondent in the sum of Kshs.378,563.00 as per the Certificate of Taxation.

b. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 14TH DAY OF JULY, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

