



Manyonge Wanyama & Associates LLP v County Secretary. County Government of Kericho & 2 others (Environment and Land Miscellaneous Application E011 of 2023) [2024] KEELC 13325 (KLR) (21 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13325 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2023
LA OMOLLO, J
NOVEMBER 21, 2024**

BETWEEN

MANYONGE WANYAMA & ASSOCIATES LLP APPLICANT

AND

**COUNTY SECRETARY. COUNTY GOVERNMENT OF KERICHO 1ST
RESPONDENT**

**CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF
KERICHO 2ND RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE COUNTY
GOVERNMENT OF KERICHO 3RD RESPONDENT**

RULING

1. This ruling is in respect of the Applicant's Notice of Motion application dated 8th November, 2023. The said application is expressed to be brought under Section 15(2) of the *Advocates Act*.
2. The application seeks the following orders;
 - a. That this Honourable Court be pleased to order that the Certificate of Costs dated 14th August, 2023 issued by Hon. F.M Nyakundi to the Applicant as against the Respondents in Kericho Misc. Application No. E001 of 2023 Manyonge Wanyama & Associates LLP versus The County Government of Kericho arising from Kericho ELC Petition No. E004 of 2021; James Finlays (Kenya) Limited versus The National Land Commission & Others for the sum of Kenya Shillings Two Million, Four Hundred and Forty-Five Thousand, Three Hundred and Ninety-Eight (Kshs. 2, 445,398/=) be adopted into judgement and decree of this Court.



- b. That the Applicant be allowed to execute the judgement herein against the Respondents, that is; The County Secretary, County Government of Kericho, The Chief Officer Finance, County Government of Kericho and County Executive Committee Member For Finance, County Government of Kericho.
 - c. That the Costs of this application be provided for.
3. The application is based on the grounds on its face and the Supporting Affidavit of one Peter Wanyama sworn on 8th November, 2023.

Factual Background.

4. The application under consideration first came up for directions on 18th December, 2023 when the Court granted the Respondents seven days to file their responses.
5. The application was mentioned on 31st January, 2024 and 22nd February, 2024 when the Respondents were granted more time to file their responses.
6. The matter was again mentioned on 23rd September, 2024 and reserved for ruling.

The Applicant's contention.

7. The affidavit in support of the application is sworn by Peter Wanyama the Managing Partner of the Applicant.
8. He contends that the Applicant received instructions on 16th December, 2021 from the County Government of Kericho to represent it in Kericho ELC Petition No. E004 of 2021; James Finlays (Kenya) Limited versus The National Land Commission & Others.
9. He also contends that the Applicant offered legal services in the matter as instructed and proceeded with it to its completion.
10. He further contends that subsequently, the Applicant filed an Advocate-Client Bill of Costs dated 12th January, 2023 to wit Kericho Misc. Application No. E001 of 2023; Manyonge Wanyama & Associates LLP versus The County Government of Kericho arising from Kericho ELC Petition No. E004 of 2021; James Finlays (Kenya) Limited versus The National Land Commission & Others seeking a sum of Kshs. 2, 419, 398.60/= to be paid by the Respondents as legal fees.
11. It is his contention that on 25th July, 2023 the Taxing Officer delivered his ruling and taxed the said bill of costs at kshs. 2, 445, 398/=.
12. It is also his contention that on 14th August, 2023 the Court issued a Certificate of Costs for Kshs. 2, 445, 398/= which was served upon the Respondents through their Advocates on Record on 17th August, 2023 after an unsuccessful attempt to physically serve them. He adds that the Respondents refused to stamp the Applicant's physical copy as proof of service.
13. It is further his contention that the Applicant also served the Respondent with the letter dated 16th August, 2023 requesting that the Respondents pay the outstanding amount of Kshs. 2, 445, 398/=.
14. He contends that the Respondents are the authorized Accounting and Chief Executive Officers of the County Government of Kericho and as such they are under a public duty to ensure that the County Government of Kericho fulfills its legal obligations without fail.



15. He also contends that the Applicant is being wrongly deprived of the fruits of its judgment as the Respondents have failed to pay the decretal sum in full. He adds that the Applicant is suffering loss and damage.
16. He reiterates that there is an outstanding sum of Kshs. 2, 445,398/= that is due and payable by the Respondents to the Applicant in respect of the Taxation Ruling delivered on 25th July, 2023 by the Deputy Registrar, Hon. F.M Nyakundi.
17. He contends that the Applicant is seeking that a decree be issued with respect to the Certificate of Costs dated 14th August, 2023 against the Respondent.
18. He ends his deposition by stating that the Applicant is applying to have the Certificate of Costs dated 14th August, 2023 adopted as a judgment so that they can extract a decree and execute it in order to obtain the outstanding legal fee.

Respondents Response.

19. The Respondents filed a Replying Affidavit sworn by Gideon K. Mutai the 3rd Respondent's County Attorney on 27th February, 2024.
20. He deposes that the 3rd Respondent had through the letter dated 16th December, 2021 instructed the Applicant to represent the County Government of Kericho in Kericho ELC Petition E004 of 2021 James Finlay Kenya Limited versus the National Land Commission and the County Government of Kericho.
21. He also deposes that the Applicant represented the County Government of Kericho until sometime in January, 2023 when it filed an application to cease acting dated 12th January, 2023.
22. He further deposes that after the Applicant ceased acting, it filed a bill of costs in Kericho Misc. Appl No. E001 of 2023 Manyonge Wanyama Associates LLP versus the County Government of Kericho seeking to be paid a sum of Kshs. 2, 419, 398/=.
23. It is his deposition that the 3rd Respondent filed its response to the said bill of costs dated 8th May, 2023 through J.W Wachira who was its Advocates on record.
24. It is also his deposition that the Taxing Officer delivered his ruling on 25th July, 2023 and taxed the said bill of costs at Kshs. 2, 445, 398/=.
25. It is further his deposition that on 17th August, 2023 the 3rd Respondent was served with a Certificate of Costs dated 14th August, 2023 and the letter dated 16th August, 2023 by the Applicant.
26. He deposes that the 3rd Respondent is under a transition as a result of new leadership and as such has not been able to satisfy the Certificate of Costs dated 14th August, 2024 and/or any pending bills.
27. He also deposes that the 3rd Respondent does not have a budget for the current pending bills and therefore any satisfaction of the certificate of costs together with the other pending bills will impair its operation.
28. He further deposes that the Certificate of Costs will be prioritized in the next financial year.
29. He ends his deposition by stating that the 3rd Respondent will pay the Applicant as soon as funds are available.



Issues for determination.

30. The Applicant filed its submissions on 9th May, 2024 while the Respondents filed their submissions on 23rd May, 2024.
31. The Applicant submits on the following issues;
 - a. Whether this Honourable Court should be pleased to adopt as judgement the certificate of costs dated 14th August, 2023.
 - b. Whether the sum of Kshs. 2,445,398/= should attract interest from the date of the award until full payment.
 - c. Who should bear costs of the application?
32. With regard to the first issue, the Applicant relies on Section 51(2) of the *Advocates Act*, the judicial decision of Lesinko Njoroge & Gathogo Advocates versus Invesco Assurance Co. Ltd [2021] eKLR and submits that the Respondents have not filed any reference to set aside, stay or appeal the Certificate of Costs that had been issued by the Taxing Officer and neither have they disputed its retainer.
33. The Applicant also relies on the judicial decisions of Wilfred Nyaundi Konosi t/a Konosi & Advocates versus John Lokorio [2015] eKLR, Gordon F.O Ogola & another versus Gordon Kipkoech Ngetich [2020] eKLR and submits that the Respondents have not given any reasons for the delay in making the said payments after they were served with the Certificate of Costs.
34. The Applicant seeks that this Court allows its application dated 28th November, 2023.
35. With regard to the second issue, the Applicant relies on Rule 7 of the Advocates Remuneration Order, the judicial decision of Amondi & Co. Advocates v County Government of Kisumu [2021] eKLR and submits that taxed costs should attract interest thirty days after the date of the ruling.
36. On the third issue, the Applicant seeks that it be awarded costs of the application.
37. The Respondents submit on the following issues;
 - a. Whether the Applicant is entitled to the orders sought in their application dated 8th November, 2023.
 - b. Whether the sum of Kshs. 2,445,398/= should attract interest from the date of the award until full payment.
 - c. Costs.
38. With regard to the first issue, the Respondents reiterate the averments of Gideon K. Mutai in his Replying Affidavit and submit that the County Government of Kericho will pay the Applicant as soon as the funds are available.
39. On the second issue, the Respondents rely on Section 26 of the *Civil Procedure Act*, the judicial decisions of Governors Baloon Safari Limited vs Skyship Company Limited & another [2020]eKLR, Nzei and Co. Advocates vs Export Processing Zones Authority [2022]eKLR and urge the Court to dismiss the Applicant's application dated 8th November, 2023.

Analysis and Determination.

40. I have considered the application, the Response thereto and the rival submissions.



41. The issues that arise for determination are as follows;
- a. Whether the Certificate of Costs dated 14th August, 2023 should be adopted as the judgement and decree of this Court.
 - b. Whether the Applicant should be allowed to execute the judgement against the Respondents.
 - c. Who should bear costs of the application.

A. Whether the Certificate of Costs dated 14th August, 2023 should be adopted as the judgement and decree of this Court.

42. Section 51 of the *Advocates Act* provides as follows;

- “(1) Every application for an order for the taxation of an Advocate’s bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an Advocate shall be made in the matter of that Advocate.
- (2) 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.”

43. The Court while considering the provisions of Section 51 of the *Advocates Act* in *Ndungu Githuka and Company Advocates v*

Geoffrey Moriaso Ole Mailoy [2019] eKLR stated thus;

- “11. It would appear from the section that whereas sub section (1) refers to applications for an order of taxation of Advocate’s bill and therefore determination of the Advocates costs, subsection (2) is clear that the certificate of costs once issued by the Taxing officer is final unless set a side or altered by the Court. The Court may also make an order that judgment be entered in terms of the amount in the certificate of costs.”

44. In the judicial decision of *Lubullellah & Associates Advocates V NK Brothers Ltd* [2014] eKLR the Court held as follows;

“The law is very clear that once a taxing master has taxed the costs, issued a certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the Court save to enter judgement. An applicant is not required to file suit for the recovery of costs.”

45. In the present case, it is not disputed that the Applicant’s bill of costs was taxed on 25th July, 2023 and a Certificate of Costs issued on 14th August, 2023.

46. The Certificate of Costs has not been challenged and neither has it been set aside. The Respondents admit that the said Certificate of Costs was served upon them and they only seek more time to pay the said amount.

47. That being the case, nothing is easier than to enter judgment in favour of the advocate in the sum of Kshs. 2, 445, 398/=.



48. The Applicant raised the issue of whether the sum of kshs. 2, 445,398/= should attract interest from the date of the award in its submissions. It is important to note that in the application under consideration, the Applicant did not seek orders that the Court grants interest on the taxed amount.

49. In *Clips Limited v Brands Imports (Africa) Limited* formerly named *Brand Imports Limited* [2015] eKLR the Court held as follows;

“However, it is trite law that new issues cannot be raised in submissions. Korir, J in the case of *Republic v Chairman Public Procurement Administrative Review Board & another Ex-Parte Zapkass Consulting And Training Limited & another* [2014] eKLR held that:

“The Applicant, the respondents and the Interested Party all introduced new issues in their submissions. Submissions are not pleadings. There is no evidence by way of affidavits to support the submissions. New issues raised by way of submissions are best ignored.”

50. As was held in the above cited judicial decision, the Applicant cannot seek, in submissions that the court considers the question of interest and awards it when the same is not sought in the application.

B. Whether the Applicant should be allowed to execute the judgement against the Respondent.

51. The Applicant is seeking to be allowed to execute judgement against the Respondent.

52. In response, the Respondent submits that it is under a transition and it is therefore not in a position to satisfy any pending bills.

53. The Respondent also submits that it will pay the Applicant as soon as funds are available.

54. In *Jamleck Waweru Karanja v County Government of Nakuru* [2020] eKLR the Court held as follows;

“...a party wishing to realize the fruits of a judgement against the government must first start by securing a certificate of costs and certificate of order against the Government as held in the case of *Republic versus Principal Magistrate's Court at Mavoko & another Ex-Parte Joseph Ole Lenku Governor Kajiado County & another* [2018] eKLR.

Armed with the certificate of costs and certificate of order against the respondent, County government of Nakuru, the next step would have been for the claimant to seek a writ of mandamus compelling the relevant officer in the county government of Nakuru to honour the decree as held in the case of *Judicial Review Miscellaneous Application No. 44 of 2012 between the Republic versus The Attorney General & Another ex parte James Alfred Koroso* and the finding that;

“...In the present case the ex parte applicant has no other option of realizing the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realized...”

Therefore, the law as it stands, no execution can be levied against the property of a Government and or a County Government in settlement of a decree in a civil case and hence the only recourse available to a decree holder is to apply for mandamus against the Chief Officer of the Government, and upon obtaining such orders, the decree holder will be at liberty to apply for committal of the Chief Officer if the order of mandamus is not



complied with. See Republic versus Attorney General & another ex-parte Stephen Wanyee Roki (2016) eKLR.”

55. As was held in the judicial decision of *Jamleck Waweru Karanja v County Government of Nakuru* (supra), a party seeking to realize fruits of a judgement against a government must first obtain a certificate of costs and a certificate of order against the government. Upon obtaining the said documents, the said party is at liberty to seek a writ of mandamus to compel the relevant officer of the government to honor the decree.
56. It is evident that the Applicant has not followed the requisite procedure and I therefore decline to grant this prayer.

Disposition.

57. Taking the foregoing into consideration, the Application dated 8th November, 2023 is allowed in the following terms;
- a. The Certificate of Costs dated 14th August, 2023 issued by Hon. F.M Nyakundi to the Applicant as against the Respondents in Kericho Misc. Application No. E001 of 2023 *Manyonge Wanyama & Associates LLP versus The County Government of Kericho* arising from Kericho ELC Petition No. E004 of 2021; *James Finlays (Kenya) Limited versus The National Land Commission & Others* for the sum of Kenya Shillings Two Million, Four Hundred and Forty-Five Thousand, Three Hundred and Ninety-Eight (Kshs. 2, 445,398/=) is hereby adopted as judgement and decree of this Court.
 - b. The Applicant shall have costs of this application.

58. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 21st DAY OF NOVEMBER, 2024.

L. A. OMOLLO

JUDGE.

In the presence of:

Miss Komen for the Applicant.

Miss Gichana for Wachira for Respondents.

Court Assistant; Mr. Joseph Makori.

