



**Kiugu v County Secretary, Government of Kiambu County
& 4 others (Judicial Review Application E141 of 2024)
[2025] KEHC 7447 (KLR) (Judicial Review) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7447 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW APPLICATION E141 OF 2024

RE ABURILI, J

MAY 28, 2025

BETWEEN

GEOFFREY MURIUNGI KIUGU APPLICANT

AND

**COUNTY SECRETARY, GOVERNMENT OF KIAMBU COUNTY 1ST
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE KIAMBU
COUNTY 2ND RESPONDENT**

**CHIEF OFFICER FINANCE, GOVERNMENT OF KIAMBU
COUNTY 3RD RESPONDENT**

**THE GOVERNOR, GOVERNMENT OF KIAMBU COUNTY 4TH
RESPONDENT**

GOVERNMENT OF KIAMBU COUNTY 5TH RESPONDENT

JUDGMENT

1. Pursuant to leave granted on 10/7/2024, on 11th July 2024, the exparte applicant filed Notice of motion dated 11th July 2024 seeking judicial review orders of mandamus compelling the respondents to settle certificate of order for costs against the County Government of Kiambu as decreed in Nairobi High Court Judicial Review Case No. 262 of 2015 Dagoretti Slaughter House Company Limited v Kiambu County Government.
2. The Certificate of order for costs is issued pursuant to Order 29 Rule (3) of the Civil Procedure Rules and section 21 of the [Government proceedings Act](#), for the sum of Kshs 1,588,219.80 as per the certificate



of order for costs against the Government dated 26th October, 2023, following the ruling on taxation of the advocate/ client bill of costs dated 25th August 2021 on 17/ 3/2022 and the certificate of costs dated 20th April, 2022.

3. Opposing the application, the respondents filed a replying affidavit sworn by William Kimani the Chief Finance Officer working in the Finance Department of the 5th Respondent, County Government of Kiambu on 1st October 2024 deposing that delay in remitting the taxed costs was due to lack of sufficient funds to cater for the same.
4. That the claim being appending bill, it falls among the over 3.7 billion pending bills accruing from the 2019/2020 financial year and that priority in payment is given to the first in time bills after a rigorous procedure of verification to ensure that it conforms to financial prudence measures and authorizations by the Controller of Budget. He urged this court to dismiss the application with costs to the respondents.
5. The application was argued orally reiterating the above positions although the parties filed authorities to support their respective positions.

Analysis and determination

6. I have considered the application and the opposition thereto, together with the oral submissions for and against the application for mandamus. The only issue that I shall determine and which has not been argued by any of the parties but which is so critical is whether the application as filed with leave of court is competent before this court for determination on its merit.
7. The reasons for flagging out this single issue can be found in section 51 of the *Advocates Act* Cap 16 Laws of Kenya which provides:

51. General provisions as to taxation

- (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. [emphasis added]

8. The relevant part is section 51(2) underlined above, which provision has been interpreted by Courts in several judicial pronouncements, clarifying the procedure following taxation of advocate/client bill of costs where there is no challenge to retainer and to the certificate of taxation by way of a Reference pursuant to paragraph 11 of the Advocated Remuneration Order.
9. In *Musyoka & Wambua Advocates vs Rustam Hira Advocates* [2006] eKLR, the court stated as follows concerning the above section:

“Section 51 of the Act makes general provisions as to taxation, as the marginal note indicates one of those provisions is that the court has discretion to enter judgment on a certificate of taxation which has not been set aside or altered, where there is no dispute as to retainer. This in my view is a mode of recovery of taxed costs provided by law, in addition to filing of suit.”



10. The above decision was also cited in *Tom Ojienda & Associates vs Nairobi City County* [2022] e KLR.
11. Thus, the procedure provided in Section 51 (2) of the *Advocates Act* aids in the recovery of advocate/client costs as long as:
 - a. the costs have been taxed by and certified under the hand of the taxing master by a certificate of costs;
 - b. the certificate of costs has not been set aside or stayed or appealed against on a reference filed upon it; and
 - c. there is no dispute on retainer.
12. In such cases and before execution can be set in motion, judgment must first be entered in the sum in the certificate of costs upon application by the advocate.
13. In *Lubulellah & Associates vs N. K. Brothers Limited* (2014) eKLR, the court observed that:

“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 the 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. The certificate of costs is final as to the amounts of the costs and the court would be quite in order to enter judgment in favour of the applicant against the Respondent for the taxed sum indicated in the certificate of taxation that was issued on 25th November 2012.”
14. The procedure stated in the above decision is in the public domain that after taxation of a bill of costs between advocate and client, a certificate of taxation is issued and where there is no challenge to that taxation on account of retainer or by way of Reference or where a reference is determined and the certificate of taxation is not altered or set aside, that certificate of taxation is final as far as the amount of costs is concerned and therefore, the next step is for the applicant to file an application for judgment to be entered in his favour in terms of the certificate of taxation upon which a decree is issued and it is only that decree that can be executed for recovery of the taxed costs.
15. In other words, execution for recovery of advocate/client taxed costs can only be issued or levied after the certificate of taxation has been adopted by the judge as judgment of the court and a decree issued so that it is the decree of the court, for the costs that are being enforced. Nothing short of that procedure which is not just a procedural technicality curable under Article 159 of *the Constitution*. See my decision in *UAP Insurance Company Limited v Alfred Mdeizi t/a Pave Auctioneers & another* (Civil Appeal 32 of 2018) [2023] KEHC 22683 (KLR) (28 September 2023) (Judgment).
16. In *Shade Manufacturing & Hotel Limits vs Serah Mweni Matuu & 3 Others* (2021) eKLR, Makau J. as he then was had to say.

“I find that the Respondent did not make a formal application to the court for the certificate of costs to be converted to a judgment.’ ...According to the above Section 51(2) of the *Advocates Act*, the Respondent ought to have made a formal application for the Ruling of the taxing master to be adopted as a judgment by this court.”
17. A similar holding was made in *Union of Kenya Civil Servants vs Kenya County Government Workers Union & Another; KCGWU (client); Mbuvi t/a Katunga Mbuvi & Company Advocates (Adv.) Misc.*



Application No. E216 of 2021 [2023] eKLR in January 2023 where Dr. Jacob Gakeri J of ELRC observed correctly that:

“So typically, after the certificate of costs dated June 13, 2022 was issued by the Deputy Registrar, it was the duty of the Respondent/Advocate to have the same adopted as judgment of the court.”

18. In the instant case, the ex parte applicant only annexed the certificate of taxed costs and the certificate of order for costs against the Government as per the certificate of costs. There is no evidence that any challenge to the said certificate of costs was made by way of a reference. Therefore, the certificate of costs remains intact as it has not been set aside. However, for any execution process to be set in motion for recovery of the taxed costs as per the certificate of costs, the applicant must apply to court under section 51(2) of the *Advocates Act* for entry of judgment in terms of the certificate of costs upon which the court would issue decree which would then be converted into certificate of order against the government, capable of being served upon the respondents under section 21 of the *Government proceedings Act* with a demand for settlement, before the application for leave to apply for mandamus can be made or sought against the respondents.
19. In other words, the ex parte applicant advocate should first have sought and obtained a judgment in terms of the certificate of costs and a decree issued upon which a certificate of order against the Government would issue, for purposes of execution. There is no evidence on record that the requisite application was made for consideration.
20. It follows that the certificate of taxation issued by the Deputy Registrar was not executable, without judgment being sought and entered adopting the said certificate of taxation.
21. In the circumstances, I have no difficulty in finding and holding that the application for leave to apply and the notice of motion herein filed pursuant to the leave granted on 10/7/2024 were incompetent and premature and that the leave granted was made in error and the same is hereby set aside.
22. As there is no judgment and decree of the court on the certificate of costs capable of being executed through judicial review orders of mandamus, I must do the honorable thing and that is, to strike out the application by way of Notice of motion dated 11th July 2024.
23. As the taxed costs are yet to be settled, I order that each party bear their own costs of the application as struck out.
24. I so order.
25. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF MAY, 2025

R.E. ABURILI

JUDGE

