



**Tom Ojienda & Associates v County Government of Nairobi (Miscellaneous Application E131 of 2022) [2025] KEHC 6959 (KLR) (Judicial Review) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6959 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E131 OF 2022  
RE ABURILI, J  
MAY 28, 2025**

**BETWEEN**

**PROF. TOM OJIENDA & ASSOCIATES ..... ADVOCATE**

**AND**

**COUNTY GOVERNMENT OF NAIROBI ..... CLIENT**

**RULING**

1. Before this Court for consideration is a Notice of Motion dated 5th February, 2024, brought by the Advocate/Applicant pursuant to Section 51(2) of the Advocates Act, seeking judgment for the sum of Kshs. 399,982.50, being the amount certified in the Certificate of Taxation dated 23rd January, 2024. The taxed costs arise from legal services rendered to the Respondent client by the applicant advocate in Judicial Review Application No. 386 of 2012 – *Barclays Bank of Kenya Ltd v The Town Clerk, City Council of Nairobi and Sailus Migosi Bogonko*.
2. The Certificate of Taxation was issued pursuant to a ruling delivered on 21st September, 2022, and has not been challenged, varied, or set aside. Additionally, there is no dispute as to retainer and neither is there any reference filed challenging the certificate of taxation.
3. Under Section 51(2) of the *Advocates Act*:

“The certificate of the taxing officer... 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.”
4. The Respondent was duly served with the application and entered appearance through an advocate, but did not file any replying affidavit opposing the same. The application was argued orally on 13th May, 2025.



5. There being no objection to the validity of the Certificate of Taxation, the Court finds that the Advocate is entitled to judgment in the amount certified.
6. With regard to the prayer for interest, the Court notes that the bill of costs did not include a prayer for interest, as required by Rule 7 of the [Advocate Remuneration Order](#) and there is no evidence of a prior demand for interest before filing the bill.
7. In [D. Njogu & Company Advocates v Kenya National Capital Corporation](#) [2006] eKLR, it was held:

“Interest can only be awarded where it is claimed either in the bill of costs or a demand for interest is made prior to filing of the bill of costs. It cannot be claimed for the first-time during judgment.”
8. Accordingly, the prayer for interest fails.
9. The Advocate also seeks leave to execute the judgment. However, it is evident from the pleadings and the background of the case that the Respondent is the City County Government of Nairobi, a public entity. Execution against the Government is governed by Section 21 of the [Government Proceedings Act](#), which prohibits direct execution of a decree against the Government. Order 29 of the [Civil Procedure Rules](#) too, prohibits execution against the Government. In such cases, the proper procedure is to institute separate proceedings for judicial review by way of mandamus to compel payment.
10. Therefore, the prayer for leave to execute the judgment is premature and cannot be granted at this stage. It is declined and dismissed.
11. In the end, Judgment is hereby entered in favour of the Advocate/Applicant for the sum of Kshs. 399,982.50, being the taxed costs as per the Certificate of Taxation dated 23rd January, 2024.
12. The prayer for interest is hereby declined.
13. The prayer for leave to execute the judgment is declined for being premature. The Applicant may pursue appropriate remedies under the [Government Proceedings Act](#).
14. Each party shall bear their own costs of this application.
15. Decree to issue.
16. As enforcement of decree cannot take place in this file, this file is closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MAY, 2025**

**R.E. ABURILI**

**JUDGE**

