



**Chanai & 26 others v Jack & Jill Supermarkets Ltd (Cause  
925A of 2014) [2024] KEELRC 1853 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1853 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE 925A OF 2014**

**BOM MANANI, J**

**JULY 15, 2024**

**IN THE MATTER OF THE ADVOCATES ACT, CAP 16 OF THE  
LAWS OF KENYA**

**AND**

**THE ADVOCATES (REMUNERATION) (AMENDMENT) ORDER,  
2014**

**TAXATION OF PARTY AND PARTY BILL OF COSTS**

**BETWEEN**

**OMWENGA JOSEPH CHANAI & 26 OTHERS & 26 OTHERS ..... CLAIMANT**

**AND**

**JACK & JILL SUPERMARKETS LTD ..... RESPONDENT**

**RULING**

1. The Applicant has filed the application dated 21<sup>st</sup> May 2024 through which it seeks the following orders:-
  - a. Spent.
  - b. Spent.
  - c. That the court be pleased to set aside the taxation ruling and incidental orders issued on 16<sup>th</sup> May 2024 by the Honourable Fredrick Nyamora, the Senior Principal Deputy Registrar with respect to items 1 and 2 in the Party and Party Bill of Costs dated 16<sup>th</sup> November 2023.
  - d. That the court does refer the Party and Party Bill of Costs to another Taxing Master for fresh taxation.



- e. That costs of the application be provided for.
2. The Applicant is aggrieved by the decision of the Taxing Master essentially on the ground that the Taxing Master committed an error of principle in the taxation which resulted in the award of instructions fees that were inordinately high. It is the Applicant's case that the Taxing Master erroneously used the figure of Ksh. 2,322,665.38 instead of Ksh. 323,478.84 or thereabouts as representing the value of the subject matter. And hence, the assessment of an excessive sum towards instruction fees.
3. The dispute from which the taxation arose was decided by the Employment and Labour Relations court through a decision which was rendered on 2<sup>nd</sup> August 2019. In the decision, the trial court found that the Applicant had irregularly terminated the services of the Claimants.
4. It was the trial court's view that the Claimants' employment was lost through redundancy and not frustration of their contracts through force majeure. As such, they (the Claimants) were entitled to redundancy pay in terms of section 40 of the Employment Act.
5. The trial court went ahead to award the successful Claimants the following reliefs:-
  - a. Salary for days worked between 15<sup>th</sup> May 2013 and 23<sup>rd</sup> May 2013 amounting to Ksh. 234,000.00.
  - b. Severance pay on account of redundancy at the rate of 15 days' salary for each successful Claimant for every year worked.
  - c. Pro-rata leave for four (4) months in the year 2013.
  - d. Salary in lieu of notice to terminate the successful Claimants' contracts of service.
  - e. Costs of the case.
  - f. Interest at court rates from the date of the judgment.
6. The trial court's decision contains a tabulation of each of the successful Claimant's entitlement under the judgment. The sum total for all the successful Claimants came to Ksh. 2,322,665.38.
7. Aggrieved by the decision, the Applicant appealed to the Court of Appeal. In reaction, the Claimants filed a cross appeal.
8. In its decision dated 1<sup>st</sup> April 2022, the Court of Appeal rendered itself as follows:-
  - a. The appeal is hereby allowed to the extent of setting aside the trial court's findings based on the principle of redundancy.
  - b. The learned Judge's award to the respondents in respect of salary payments for the eight (8) days worked in the month of May 2013 and payment in lieu of leave for four months in the year 2013 as computed by the learned Judge is upheld.
  - c. The cross-appeal is hereby dismissed.
  - d. Each party to bear their own costs.
9. Although the Court of Appeal's decision does not give particulars of the amounts that were affected as a result, it is apparent that the only items that were retained from the trial court's award related to salary for the days worked in May 2013 and pro-rata leave pay for the year 2013. As is apparent from the computation by the parties, the effect of the Court of Appeal decision was to bring the amounts due to



the successful Claimants under the aforesaid heads (exclusive of interest) to a sum of Ksh. 323,841.81 or thereabouts.

10. That the foregoing is the position is clear from the Claimants' Advocates' letter to the Applicant's lawyers dated 16<sup>th</sup> May 2024 through which they demanded payment of the aforesaid sum together with costs of Ksh. 534,825.00 and interest. In its application under consideration, the Applicant also alludes to a near similar figure of Ksh. 323,478.84.
11. It thus does appear that the Taxing Master committed an error of principle when he used the sum of Ksh. 2,322,665.38 as representing the value of the subject matter when the decision of the Court of Appeal had scaled down the figure by discounting all the trial court's findings that were premised on the principle of redundancy. As such, the assessment of instructions fees under items 1 and 2 in the Bill of Costs dated 16<sup>th</sup> November 2023 are hereby set aside. The matter is remitted to a Taxing Master other than Hon. Fredrick Nyamora for taxation of the two items based on the observations in this decision.
12. Costs of the application are granted to the Applicant/Respondent.

**DATED, SIGNED AND DELIVERED ON THE 15<sup>TH</sup> DAY OF JULY, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Applicant

.....for the Claimants/Respondents

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

**JUDGE**

