



**Malde v Mutsimoto Motors Limited (Employment and Labour Relations Cause 19 of 2020) [2024] KEELRC 2131 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2131 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 19 OF 2020**

**HS WASILWA, J  
JULY 31, 2024**

**BETWEEN**

**RASHMI MALDE ..... CLAIMANT**

**AND**

**MUTSIMOTO MOTORS LIMITED ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the claimant/ Applicant Notice of Motion dated 29<sup>th</sup> April, 2024, brought pursuant to section 3A of the Civil Procedure Act, Rule 11(1)&(2) of the Advocates Remuneration Order and all others enabling provisions of the law, seeking for the following Orders;-
  1. That the Ruling of the Taxing Officer dated 2/04/2024 on the Bill dated 30<sup>th</sup> day of June 2023 be set aside.
  2. That this Honourable Court be pleased to direct the re-taxation of Items 9, 10 and 11 in the Amended Party to Party Bill of Costs.
  3. That costs of the objection herein or reference be borne by the Respondent.
2. The basis upon which the Application is made is that the Taxing master did not tax the subject items above, for the sole reason that the Claimant had not proved the Agreement dated 31/03/2020, when the Respondent relied on the said agreement and the Court in its judgement also relied on the said agreement.
3. The Affiant stated that in the supporting affidavit sworn by the claimant on 29<sup>th</sup> April, 2024, the claimant stated that he has already written to the Deputy registrar to seek reasons for the taxation as provided for under Rule 11(1) of the advocates Remuneration Order.
4. He reiterated that the subject items were taxed off for the reason that the agreement of 31<sup>st</sup> March, 2020 was not proved, when the said Agreement was in fact produced by the Respondent and the Court



- adopted the contents thereto and made the said Agreement the basis of Judgment, which meant that the execution of the Judgment and its attendant consequences will be based on the said Agreement including but not limited to Costs and Interest.
5. He stated that the terms the Agreement were clear that the losing Party will bear Costs not only as between themselves (that is to say Party and Party) but also to bear costs of the Advocate for the succeeding Party (that is to say the Advocate Client Costs). This was the basis of the item 9 and 10 of the Amended Bill of Costs.
  6. He added that the said Agreement also provided that the Successful Party will be entitled to Costs of the Decreed amount, which had been decreed at Kshs. 670,000. Moreover, that even if the term on Interest didn't exist, the provision of section 26 of the Civil Procedure Act provides the entitlement of the successful party to the suit to be granted costs and indeed the Court granted Costs and Interest.
  7. He stated that the items in the Bill of Costs were properly set out and references to corresponding laws cited. Thus the items ought to have been allowed.
  8. In the supplementary affidavit sworn on 23<sup>rd</sup> May, 2024, the claimant stated that in addition to the supporting affidavit that he complied with the provisions of Rule 11 (1) and (2) of the Advocates Remuneration Order in writing the letter to the Deputy Registrar, which the taxing office wrote back advising him to pursue a reference.
  9. He stated that the Bill of Costs under reference here is one amended on 30/06/2023 and the Ruling by the Taxing Master as printed from the portal dated 2/4/2024 had partly allowed the Bill of Costs, but declines to award the items in B and C for failing to prove the agreement dated 31/03/2020. Hence the items were depended on the Agreement dated 31/03/2020, which was proved and adopted by this court in its judgement. Therefore that the document referred to in paragraph 8 above contained the provision that bound the parties to how the fees was to be paid.
  10. He expounded that in the agreement, clause 8 expressly stated that the parties that lost the case will bear the costs of the successful party's fees including those of the Advocate. This properly construed means that the Party succeeding will bear costs as tabulated in item B of the Bill. Further that Clause 4 provided for payment of interest.
  11. Moreover, that the agreement was adopted by the trial Court at paragraph 37 of the Judgment that held that; 'On 31/03/2020 the Claimant and respondent entered an agreement detailing how the respondent was to pay 670,000 owed to the Claimant.' Based on the decision by the Court, the execution of the agreement should be done within the precincts of the agreement dated 31/03/2020.
  12. On that basis, the claimant urged this Court to refer the party and party costs for re-taxation and in the alternative, this Court proceeds to re-tax items B and C of the Bill .
  13. Despite service of the Reference on the Respondent, no responses were made. Nonetheless, the Application was canvassed by written submissions.

### **Claimant/Applicant's Submissions**

14. The Applicant submitted on three issues; whether the claimant proved the existence of the agreement dated 31/03/2020 to warrant the deputy registrar to tax the Bill in respect to item B, whether the deputy registrar was to also compute the interest accruing in respect of these items and whether tabulation was proper and as per law.
15. On the first issue, it was submitted that the agreement in Part B was proved during trial and the Court endorsed the same at paragraph 37 of the Judgment delivered on 16/12/2021. Further that at



paragraph 40 of the Judgement the Court expressly found for the claimant against the Respondent as per the agreement. Accordingly, that since the Agreement provided for payment of agreed sum together with costs and interests, the taxing master ought to have allowed all items in the Bill of costs.

16. On interest to be awarded, it was submitted that by the Judgment dated 6/12/2021 the court granted interest. Further that the agreement provided for interest at clause 4. That by the time the Respondent paid the Decretal amount on 17/2/2022, the period that had lapsed was 22 months from 18/4/2020 when the default began, thus interest for the period should be awarded.
17. On whether the tabulations were proper, the claimant argued that he drew the Bill to scale in line with Schedule 6 (b) of the [Advocates Remuneration Order](#), 2014. Besides that, the Bill was not opposed.
18. In conclusion, the claimant prayed for the reference to be allowed and the Court to tax parts B and C as drawn or remit the same for re-taxation before the deputy registrar.
19. The basis of this reference is failure by the taxing mistress to consider an agreement on which the parties were relying on on the ground that it was not proved. It is however clear that the agreement was exhibited in court and was part of this court's proceedings and this court made reference to it in the judgment. It is therefore true that the taxing mistress erred in not considering the agreement of the parties as per the said document.
20. I will therefore remit this bill of costs back to the taxing mistress to consider the omitted items and retax the bill accordingly bearing in mind the agreement of the parties. Costs in the cause.

**RULING DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of: -

N/A for parties

Court Assistant - Fred

