



Munene v Kahuthu & 3 others (Employment and Labour Relations Cause 017 of 2024) [2024] KEELRC 1798 (KLR) (11 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1798 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 017 OF 2024**

**HS WASILWA, J
JULY 11, 2024**

BETWEEN

REV PETER MATANO MUNENE CLAIMANT

AND

BISHOP ZACHARIAH KAHUTHU 1ST RESPONDENT

REV LUKE MWOLOLO 2ND RESPONDENT

REV CATHERINE NGINA MUSAU 3RD RESPONDENT

LYDIA MAINA 4TH RESPONDENT

RULING

1. Before me for determination, is the Respondents reference dated 25th January, 2021, filed pursuant to section 3A of the *Civil Procedure Act*, Rule 11(1) and (2) of the *Advocates Remuneration Order*, 2009 and all other enabling provision of the law, seeking for the following Orders; -
 1. Spent.
 2. That this Honourable Court be pleased to stay the execution of the decree herein together with the taxation Ruling delivered on 30th April, 2020 pending the hearing and determination of this Application.
 3. That this Honourable court be pleased to set aside the Ruling of the Taxing Master delivered on 18th December, 2020 and consequently re-tax the Respondent's Bill of Costs dated 6th August, 2020.
 4. That the costs of this Application be provided for.
2. The basis upon which the application is made is that the claim against 4 of the Respondents herein was dismissed on 3rd July, 2018 with costs, after which a new Respondent was sued and the matter



heard to its conclusion, when the Judgement was delivered in favour of the claimant against the new Respondent. Subsequently, the Respondents filed their Bill of Costs dated 6th August, 2020, which was taxed on 18th December, 2020 at Kshs 157,860.

3. That the Respondents were aggrieved by the ruling of the taxing master and filed an objection to Taxation dated 23rd December, 2020, which was not replied to.
4. It is averred that from the ruling of the Taxing master, it is evident that several items especially those dealing with instructions fees were not taxed correctly as per Remuneration Order of 2014, which was the applicable Order at the time of taxation, causing the Taxing master to award costs that was way less than what is provided in the Remuneration Order.
5. It is also stated that the Taxing master ignored the Respondents' submission together with attached authorities hence arriving at erroneous calculations, prompting, them to file this Application objecting to the award especially regarding instructions fees on the claim, Counterclaim and Application and Getting up fees.
6. It is averred that the Claimant has issued a demand for payment of the decretal sum and taxed costs made in his favour on 30th April, 2020, with intention to execute, if the Respondent do not pay up the said sum of money.
7. The affiant stated that they are now apprehensive that the claimant may proceed with execution when the Application herein is pending before this Court. Therefore, that it is necessary and in the interest of justice that stay Orders are issued to allow the court to determine this reference first.
8. In the circumstances, the Respondents urged this Court to set aside the ruling and re-tax its Bill of costs dated 6th August, 2020.
9. The Application herein was also supported by the Affidavit of Jennifer Mutua, the Respondent's Advocates, sworn on 25th January, 2021. She reiterated the grounds of the Application and in addition stated that the instruction fees ought to have been based on the Amount prayed in the Memorandum of claim and not the Judgement, because, the final Judgement rendered did not relate to the 4 Respondent.
10. She stated that the getting up fees, ought to be awarded because at the time the claim was dismissed against the 4 Respondents, the matter had been slated for hearing on various dates and on each occasioned, she had prepared for trial.
11. It was also stated with regard to instructions fees that the Taxing master ought to have multiplied the fees by four, because the Advocate was defending 4 Respondents.
12. The Application is opposed by the Claimant/ Decree Holder who filed Grounds of Opposition dated 10th February, 2021 and based on the following grounds:-
 1. That the Application is misconceived and bad in law.
 2. That contrary to what is stated in the said Application and Supporting affidavit, it's Claimant/ Decree Holder who is suffering and not that the Applicant may suffer if the Ruling of 30th April, 2020 is complied with.
 3. That the Judgment of 13th January, 2020 was awarded in favour of the Claimant/Decree Holder together with costs which decision has never been challenged by the Respondents/ Applicants.



4. That the Applicant is admitting they are yet to make good the findings of the said judgment and the Decree dated 29th July, 2020.
 5. That no irreparable damage will be occasioned to the Applicant since this is a valid Judgment which has not been overturned.
 6. That contrary to the Respondent/Applicant's assertions in the Notice of Motion Application and Supporting Affidavit, it is the Claimant/Decree Holder who is suffering and the applicant by the Applicant has an ill intention of prolonging this suffering.
 7. That there is no evidence of execution attached for the Respondent application to support their allegation.
 8. That the grounds of Appeal stated are not arguable at all as the Defendant has not stated the errors in the holding of the judgment which may succeed on appeal.
 9. That the conditions for grant of stay which is depositing the decretal sum as security has not been met and as such the Application is a waste of precious judicial time, frivolous and vexatious and ought to be dismissed in the first instance.
 10. That there's undue delay in making the stay application since the Judgment was delivered on the 13th January, 2020 exactly a twelve months ago and that the same is an afterthought and prejudicial to the Claimant /Decree Holder.
 11. That no reasons have been advanced as to why the Ruling of 30th April, 2020 should be stayed despite the fact that there is a valid Ruling and the same has never been challenged since it was delivered almost eight months ago.
 12. That as a successful Litigant the Claimant/Decree Holder is entitled to the fruits of Judgment and the Court should not protect the Judgment debtor more than the Decree holder.
 13. That there is no connection between the Reference filed by the applicant and the Decree as extracted by the Claimant/ Decree Holder.
 14. That the Taxing Master pronounced herself well after dutifully applying the Advocates' Remuneration Order, 2014 and the submissions by both parties to the Bill of Costs dated 6th August, 2020.
 15. That the Reference has been brought in bad faith and with intention of extorting the Claimants as all the items in the Bill were rightly taxed by the Taxing Master.
 16. That the costs of the suit was awarded to the Claimant and was taxed at Kshs. 159, 515/= and thus it is inconceivable for the Respondent to challenge the Ruling of 18th December, 2020.
 17. That the Application is misadvised and wrongly instituted and the same ought to be dismissed with costs to the Claimant/decree Holder on a higher scale.
13. The Application was canvassed by written submission, where the Respondents/ Applicants submitted orally on 12th March, 2021 and filed supplementary submissions on 8th July, 2021. However, that the Claimant/ Decree Holder had not file any submissions at the time of writing this Ruling.

Respondent's Submissions

14. The Respondent gave a backgrounds of the case and stated that the claim herein was commenced in 2014, where 4 Respondents were sued, however they were discharged from the proceedings by the



- Ruling of 3/7/2018. It was argued that by the time they were discharged, the Respondent had defended the suit by filling their responses and preparing for hearing, which had been scheduled for 4 different times, though it did not proceed.
15. It was argued that the Respondent based their Bill of costs on the 8.4 million sought in the claim and not the Kshs 456,252 granted in the Judgement because, the Judgement was not against them but Kenya Evangelical Church, the new respondent. Also that each of the Respondent was entitled to instructions fees, a fact which was not considered by the taxing master.
 16. In the supplementary submission, Counsel argued on whether M.M Kimuli having been discharged from proceedings on 3rd July, 2018 was properly on record on taxation of the Respondents Bill of costs. He argued that the Application to be discharged from the proceedings is not the same as an application to cease acting, thus an application to be discharged from proceedings did not sever the Advocates relationship to continue acting for the 4 Respondents, hence Counsel was properly on record in pursuing the Bill of Costs.
 17. It was submitted that when the claimant amended his Claim to include the 5th Respondent, the initial four Respondent, who were represented by M.M Kimuli Advocates were discharged from the proceedings and awarded costs, which the counsel proceeded to file a Bill of costs for consideration by the taxing master.
 18. Prior to this, the Respondent had filed an earlier filed an application seeking to be discharged from the proceedings for being non suited. This Application prompted the claimant to file an Application to Amend her Claim to introduce a new Respondent and drop the Respondents already sued. That this Applications were both to be heard on 30th November, 2017, however only the Claimant's Application was heard and the Respondent Application was held in abeyance until 3rd July, 2018 when, upon asking for Direction, the Court discharged the 4 Respondents with costs. Therefore, that the Application was heard and costs should issue.
 19. It was submitted that their Notice of Objection was filed on 26th January, 2021 as indicated in the E-receipt, which time is within the 14 days required for an Objection to taxation to be filed. He elaborated that the taxation ruling was delivered on 18th December, 2020 two days before the High Court vacation commenced on 21st December, 2020 that run till 13th January, 2021, thus, the time within this period did not run. He argued that the time began running again on 14th January, 2021 and having filed their Application on 26th January, 2021, they were within time and thus their Objection was properly filed.
 20. It is on this basis, that Counsel urged this Court to consider the Reference as properly on record and proceed to relax the Bill of Costs.
 21. It is worth noting that this is an application that has been pending before court since 2021 January. Vide an order of this court (Justice Ongaya) on 13/3/2023 this application was ordered transferred from Nairobi to me (Wasilwa J) for hearing and determination.
 22. From the ruling of J. Rika of 24/6/2021 in respect of this application, he raised pertinent questions as follows:
 - a) Whether M.M Kimuli having been discharged from the proceedings on 3rd July 2018 was properly on record on taxation of the 4 Respondents' Bill of Costs.
 - b) What costs of the Claim M.M. Kimuli sought from the court on 3rd July 2018.
 - c) What costs were granted.



- d). Whether and when the applications by the respective original parties, for amendment and dismissal of the claim, were heard.
 - e) Availability of the rulings and orders arising from the 2 applications.
 - f) Whether reference filed on 5th February 2021, relating to the Bill taxed on 18th December 2020, was filed within time.
23. From the proceedings, M. M. Kimuli had on 3/7/2018 been discharged from the proceedings accordingly following his own application. His clients were struck out of the claim with costs to them.
 24. Fast forward on the 5/9/2018, the Respondent Evangelical Lutheran Church instructed M. M. Kimuli & Co. Advocates who filed Notice of Appointment as their counsel.
 25. On 11/2/2020 the Claimants herein filed a bill of costs dated 16/9/2020. This bill was served on M.M Kimuli & Co. Advocates, the counsel on record for the Respondents. It is true that the said M. M. Kimuli & Co. Advocates had been allowed to cease acting for the original 4 Respondents who had been struck out of the claim.
 26. It is for this reason that M. M. Kimuli had to be instructed afresh by the Respondent Kenya Evangelical Lutheran Church and he filed his Notice of Appointment in this regard on 3/9/2018.
 27. It was therefore proper that M. M. Kimuli & Co. Advocates participate in the taxation as he was properly on record for the Respondent The Kenya Evangelical Lutheran Church.
 28. The Taxation proceeded as scheduled in absence of the Respondents who though served never filed any objection and didn't attend court.
 29. The Respondents even filed an application to arrest the ruling on the taxation which they never prosecuted and so the application was dismissed for want of prosecution by the Deputy Registrar on 12/3/2020.
 30. The Hon Deputy Registrar proceeded and delivered her ruling on the taxation on 30/4/2020.
 31. Let me now consider the reference to the bill of costs in relation to this application.
 32. The bill was filed by the original 4 Respondents herein.
 33. The applicant herein had sought an order staying execution on taxation ruling delivered on 30th April 2020 pending the hearing and determination of this application.
 34. The applicants also sought to have the bill of costs set aside and subsequently be re-taxed.
 35. From the submissions of the Respondent's counsel, they are objecting to the bill taxed on 18/12/2020 at Khs 157,860/= which in their application is relation to the 4 original Respondents. It is also apparent that the party and party bill of costs was in relation to the original 4 Respondents herein.
 36. These applicants have objected to the taxed bill. As observed by my learned colleague J Rika, it is not very clear in respect of what the Hon Deputy Registrar made her ruling of 30/4/2020. It is however apparent that the bill was filed by the Claimants as per the record and not the 4 Respondents herein. The ruling of 30/4/2020 as per the record is not on record.
 37. However the ruling of 18/12/2020 is the one that made a finding of the taxed bill being 157,860/=



38. The objector indicates that instructions fee was taxed below what is in the remuneration order of 2014. The objector aver that since 4 different Respondents were sued, the instruction fee should have been granted to each individually.
39. It is indeed true that costs were payable to each Respondent sued as they were all sued in their individual capacity.
40. It is also averred that the costs were not taxed to the scale as per the Remuneration order of 2014.
41. Given this indication and especially given that instruction fees was given as one block, it would be important to have the bill in question returned back to a different Deputy Registrar in Nairobi to tax this bill afresh based on the law as expounded herein. These are the orders. Costs in the cause.

RULING DELIVERED VIRTUALLY THIS 11TH DAY OF JULY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of: -

Mutua for Applicant – Present

Koceyo for Claimant – Present

Court Assistant - Fred

