



**Olus v Intra Health International (Cause 2161 of 2015)  
[2024] KEELRC 2379 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2379 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2161 OF 2015  
JK GAKERI, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**PROF STEPHEN OKEYO OLUS ..... CLAIMANT**

**AND**

**INTRA HEALTH INTERNATIONAL ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the Respondent/Applicant's Chamber Summons dated 6<sup>th</sup> March, 2024 filed on 20<sup>th</sup> March, 2024 seeking orders that:
  1. The Honourable Court be pleased to extend time to file the instant application for reference.
  2. The decision of the Taxing Master delivered on 30<sup>th</sup> November, 2023 finding that there was no proof of settlement of agreed costs and awarding the sum of Kshs.300,000/= be set aside and/or vacated.
  3. The Bill of Costs dated 20<sup>th</sup> September, 2022 be struck out.
  4. The cost of this application be provided for.
2. The Chamber Summons is based on the grounds set forth on its face and the Supporting Affidavit sworn by Kevin Wakwaya Advocate on 6<sup>th</sup> March, 2024 who deposes that the Bill of Costs dated 30<sup>th</sup> September, 2022 was taxed on 30<sup>th</sup> November, 2023.
3. The affiant deposes that the Taxing Master having found that the parties had an agreement on costs and evidence to that effect availed, the matter was deemed settled.
4. That a letter dated 29<sup>th</sup> November, 2023 requesting for the Ruling was unresponded to as was the reminder dated 11<sup>th</sup> January, 2024 and the Respondent only realized that the Court had granted costs



of Kshs.300,000/= on 22<sup>nd</sup> February, 2024, on the ground of want of evidence of payment of the sum of Kshs.300,000/=.

5. The affiant deposes that allowing execution to proceed is tantamount to having the Claimant paid costs twice and exposes the Respondent to double jeopardy on costs as the Claimant admitted having received Kshs.300,000/= as costs.
6. That the reference ought to have been filed by 14<sup>th</sup> December, 2023 but was not until 6<sup>th</sup> March, 2024 and the delay is not inordinate to disentitle the Respondent/Applicant extension of time to lodge the instant reference.
7. Counsel deposes that time starts running when the aggrieved party receives the ruling of the Taxing Master as the decision on the way forward cannot be made hitherto and the Court has jurisdiction to extend time under Rule 11(2) of the Advocates Remuneration Order and ought to do so in the interest of justice.
8. That based on the evidence of payment of the agreed costs, the Bill of Costs should have been struck out as opposed to being taxed at Kshs.300,000/= and the Taxing Master fell into error in arriving at the decision in the face of evidence of payment of the agreed costs which should be corrected.
9. That it is in the interest of justice that the application be allowed.

### **Response**

10. When the matter came up for hearing of the Respondent's Chamber Summons, on 18<sup>th</sup> April, 2024, counsel for the Applicant informed the Court that whereas service had been effected, no response had been received and prayed that the Chamber Summons be allowed.
11. Counsel for the Respondent informed the Court that the application had not been served and pray for 14 days to respond.
12. Counsel for the Applicant on the other hand displayed an affidavit of service but agreed that the Respondent be accorded time to respond to the application.
13. The Court directed the Applicant to re-serve the Chamber Summons by close of business, Respondent had 14 days to file a response and both parties were given 14 days to file and exchange submissions and a mention was slated for 4<sup>th</sup> July, 2024 to confirm compliance, but took place on 20<sup>th</sup> July, 2024 when counsel for the Respondent reported that the counter-part had reached out to settle the matter out of Court and requested for 7 days.
14. Counsel for the Respondent reported that the application had not been served and no response had been filed and was unaware of the attempts to settle the matter out of court.
15. Mr. Wakwaya for the Applicant informed the Court that Mr. Nyangito had reached out to him to compromise the application but could progress the application by filing of submissions and confirm the same in new term.
16. The Court directed parties to file 2 page submissions within 14 days and the applicant re-service by close of business and a mention slated for on 26<sup>th</sup> September, 2024 to confirm compliance.
17. By 7<sup>th</sup> September, 2024 when the Court retired to write this ruling, none of the parties had filed submissions and the Respondent had not yet filed a Replying Affidavit.



## Analysis

18. Briefly, by a judgment delivered on 1<sup>st</sup> March, 2019, the Court awarded the sum of Kshs.1,357,044.00 being 3 months' salary compensation and costs to the Claimant and the decretal sum was to attract interest at court rates from date of judgment till payment in full.
19. Documents on record reveal that the Respondent's counsel filed the Party and Party Bill of Costs dated 7<sup>th</sup> March, 2022 of Kshs.302,269.91.
20. Counsel for the Applicant deposes that the same was unmerited as the costs of the suit had been agreed upon and paid as the sum awarded was Kshs.1,357,044.00 less PAYE and other statutory deductions of Kshs.407,113.20/= Kshs.949,930.8 but as agreed, the Applicant paid Kshs.300,000/= as costs making a total of Kshs.1,249,930.80 paid on 29<sup>th</sup> March, 2019.
21. The Applicant contested the Bill of Costs variously.
22. After hearing both sides, the learned Taxing Master awarded the sum of Kshs.300,000/= on the premise that although the parties had agreed, there was no evidence of payment of the sum.
23. This is the Ruling that Applicant seeks to challenge by way of reference and seeks the Court's leave to extend time to enable it do so.
24. As held by Ringera J. in *Donholm Rahisi Stores (firm) V E.A. Portland Cement Ltd (2005) eKLR*;  
"Taxation of costs whether those costs be between party and party or between advocate and client is a special jurisdiction reserved to the Taxing Officer by the Advocates Remuneration Order. The Court will not be drawn into the arena of taxation except by way of reference (from a decision on taxation) made under Rule 11 of the Advocates Remuneration Order."
25. See also *Machira and Company Advocates V Magugu (2002) 2 E.A 248*.
26. Rule 10 of the Remuneration Order identifies the person(s) who may serve as Taxing Officers.
27. Rule 11 of the Advocates Remuneration Order provides;
  1. Should any party object to the decision of the Taxing Officer, he may within fourteen days after the decision give notice in writing to the Taxing Officer of the items of taxation to which he objects.
  2. The Taxing Officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
28. Judicial authority is consistent that failure by the Taxing Officer to provide reasons is not fatal to the application reference as they are typically contained in the ruling itself. See *Ahmed Nassir V National Bank of Kenya (2006) EA* and *Bernard Gichohi Njira V Kanini Njira Kathendu & another (2015) eKLR* among others.
29. It is common ground that the Ruling the Applicant seeks to challenge was delivered on 30<sup>th</sup> November, 2023 and both parties were represented in Court by Mr. Okumu holding brief for Mr. Nyangito and Miss Masara holding brief for Mr. Wakwaya for the Respondent/Applicant.



30. Evidently, the Applicant did not invoke Rule 11(1) of the Advocates Remuneration Order which demands action within 14 days after the decision is rendered by 14<sup>th</sup> December, 2023.
31. Uncontroverted evidence of the Applicant is that by letter erroneously dated 29<sup>th</sup> November, 2023 and another dated 11<sup>th</sup> January, 2024, it requested for a copy of the Ruling delivered on 30<sup>th</sup> November, 2023 but none was responded to and it was not until 22<sup>nd</sup> February, 2024, that the Applicant laid its hands on the ruling and filed the instant application outside the 14 days under Rule 11(2) of the Advocates Remuneration Order.
32. Documents on record reveal that the Respondent's counsel initiated the discussion on the amount of costs payable by suggesting Kshs.350,000.00 but the Applicant's counsel did not respond in writing or vide email but the sum of Kshs.1,249,930.80 was paid on 29<sup>th</sup> March, 2024, which according to the Applicant included Kshs.300,000/= as costs.
33. The Respondent/Applicant's argument that the sum of Kshs.1,249,930.80 included costs but which the Respondent contested on the ground that the Court did not order that the sum of Kshs.1,357,044.00 be taxed is fortified by the Section 49(2) of the Employment Act that;

Any payments made by the employer under this section shall be subject to statutory deductions.
34. Although the Applicant did not provide evidence of having paid for a copy of the ruling requested from the Deputy Registrar and appear to have given up after the second letter dated 11<sup>th</sup> January, 2024 coupled with the Respondent's proposal on costs, the letters are self-explanatory that efforts were expended to obtain a copy of the Ruling but to no avail.
35. More significantly, Rule 11(2) of the Advocates Remuneration Order uses the term "may" as opposed to "shall" with reference to the duration within which the reference must be filed from the date of receipt of the reasons.
36. Granted that the Applicant received the Ruling on 22<sup>nd</sup> February, 2024 and filed the instant application in March 2024, the delay, in the Court's view, is not inordinate.
37. For the foregoing reasons, and coupled with the reality that the Chamber Summons is unopposed and the fact that the parties have been negotiating, the Court is persuaded that the interests of justice will be better served if the parties are accorded an opportunity to ventilate their respective cases in the reference and a determination made.
38. Consequently, the Applicant's Chamber Summons dated 6<sup>th</sup> March, 2024 is granted in terms of Prayer No. 1 to enable the Applicant file and serve the Reference application.
39. For the avoidance of doubt, all other Orders sought are struck out.
40. Parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024**

**DR. JACOB GAKERI**

**JUDGE**

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

