

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

CAUSE NO. E913 OF 2022

KENYA AVIATION WORKERS UNION.....
.....CLAIMANT

VERSUS

KENYA AIRPORTS
AUTHORITY.....RESPONDENT

RULING

Background

1. On 16th March 2023, the court entered judgment for the Claimant against the Respondent in the following terms:-
 - a) A declaration is hereby issued that by failing to deduct and remit to the Claimant union dues from the Claimant's members who are employees of the Respondent and agency fees from non-members of the Claimant but who continue to benefit from the CBA negotiated between the Claimant and the Respondent, the Respondent has violated and breached the provisions of sections 48 and 49 of *the Labour Relations Act*.
 - b) An order is issued directing the Respondent to deduct and remit to the Claimant union dues and agency fees for the period from September 2022 onwards for the individuals mentioned in paragraph (a) above and whose particulars the Claimant shall furnish the Respondent.

- c) The Respondent by itself or through its employees, servants or authorized agents is restrained from interfering with the deduction and collection and remittance of union dues aforesaid.
- d) Costs of the claim are granted to the Claimant.
2. Paragraph (b) of the aforesaid order required the Respondent to pay to the Claimant outstanding union and agency dues based on the membership and other particulars which the Claimant was to supply to the Respondent. The record shows that the parties were unable to agree on the quantum of payment leading to a further order on 22nd April 2024 which directed the Deputy Registrar to reconcile the records to determine what had been paid and what remained outstanding.
 3. Pursuant to this order, the Respondent filed a tabulation of what it had remitted to the Claimant from August 2022. The tabulation is dated 18th June 2024 and was received by the court registry on 26th June 2024. In the instrument, the Respondent placed the amount which it had paid to the Claimant between August 2022 and April 2024 as union dues at 21,887,895.80.
 4. After some back and forth, the Claimant informed the court that the Respondent had paid all the outstanding dues and that the matter was considered as settled except for costs. Subsequently on 4th March 2025, the Claimant filed the Party and Party Bill of Costs dated 18th February 2025 in which it

claimed instruction fees based on the sum of Ksh. 21,887,895.80.

5. Based on this, the Taxing Master concluded that the value of the subject matter was Ksh. 21,887,895.80. Proceeding on this premise, the Taxing Master assessed instruction fees at Ksh. 3,000,000.00 and getting up fees at Ksh. 1,093,000.00 totaling Ksh. 4,093,000.00. He then added some other allowable items in the Bill to bring the total costs awarded to Ksh. 4,250,350.00.
6. The Respondent was aggrieved by the award. As such, it filed the instant reference.
7. The Respondent contends that the Taxing Master misapplied the law on taxation of costs in awarding the impugned costs. It asserts that the Taxing Master assumed that the sum of Ksh. 21,887,895.00 was the value of the subject matter without any legal or factual basis.
8. The Respondent avers that the aforesaid figure does not appear in the pleadings that were filed in court or the judgment of the court or the settlement between the parties, if at all. As such and in effect, the Respondent implies that the Taxing Master plucked the figure from nowhere.
9. The Respondent contends that the court asked the parties to compute the amount that was due to the Claimant following which, the parties resolved the matter and notified the court of this development. However, it contends that they (the parties) did not disclose to the court the terms of the

settlement. As such, it contends that it was wrong for the Taxing Master to assume that the value of the subject matter was Ksh. 21,887,895.00.

10. In her submissions, counsel for the Respondent contends that the aforesaid sum comprises of amounts which fall outside the period of the cause of action in the suit. As such, it is her position that the figure cannot be said to be representative of the value of the subject matter.
11. In response, the Claimant filed the replying affidavit dated 29th July 2025. It contends that the court judgment directed the Respondent to pay outstanding union dues from September 2022 to the date of settlement. It further contends that pursuant to this order, the Respondent paid Ksh. 21,887,895.00 to clear the outstanding dues. As such, it avers that this figure represents the value of the subject matter.
12. The Claimant contends that the Respondent has deliberately not disclosed the foregoing to court. As such, it accuses the Respondent of having approached the court with unclean hands.
13. The Claimant avers that the Taxing Master relied on the aforesaid figure as representative of the value of the subject matter of the suit. As such, it contends that the Taxing Master did not commit an error of principle in the taxation.

Analysis

14. The law on taxation of costs is now fairly settled. The court reviewing a reference from a taxation order is not entitled to interfere with the order unless it is demonstrated that the Taxing Master committed an error of principle whilst assessing the costs (***Mwangi Keng'ara & Co Advocates v Mungai (Miscellaneous Application E348 of 2021) [2024] KEHC 14369 (KLR) (Commercial and Tax) (20 November 2024) (Ruling)***).
15. An error of principle is a mistake which arises from the application of the wrong legal principles, rules, or scales, as opposed to a mere factual or mathematical error. An error of principle is deemed to arise if the Taxing Master: takes into account an irrelevant factor during the taxation; does not take into account a relevant factor during the taxation; or makes an award which is manifestly high or low as to justify interference (***Mwangi Keng'ara & Co Advocates v Mungai*** (supra) & ***Sheikh & another v Mas Construction Limited & 5 others (Environment and Land Case 1480 of 2014) [2024] KEELC 4351 (KLR) (30 May 2024) (Ruling)***).
16. An error of principle may also arise when the Taxing Master misconstrues the value of subject matter of the suit. Commenting on this in the case of ***Kamunyori & Co. Advocates vs Development Bank of Kenya Ltd [2015] eKLR***, the Court of Appeal observed as follows:-

“Failure to ascertain the correct subject matter in a suit is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instruction fees is arrived at on the wrong principle, it will be set aside.”

17. In ascertaining the value of the subject matter, the Taxing Master is required to make reference to the pleading, judgment or settlement between the parties (**Joreth Ltd v Kigano & Associates [2002] KECA 153 (KLR)**). The value of the subject matter should be ascertainable from either of these three instruments.
18. The pleadings and judgment in the instant cause did not refer to any specific figure as representing the value of the subject matter. However, under order number (b) in the judgment, the Respondent was ordered to deduct and remit to the Claimant union dues and agency fees for the period from September 2022 onwards for the individuals mentioned in paragraph (a) of the judgment and whose particulars the Claimant was to supply to the Respondent.
19. Following this order, the Respondent filed a tabulation dated 18th June 2024 to demonstrate that it had paid the Claimant a total of Ksh. 21,887,895.00 between August 2022 and April 2024. However, there is nothing on the court file to suggest

that the parties recorded a settlement to affirm that this was the amount that was in dispute.

20. The tabulation filed by the Respondent shows that the above amount includes a sum of Ksh. 2,081,609.00 which was paid to the Claimant in August 2022. Yet, the Statement of Claim indicates that the dispute related to unremitted union dues from September 2022. As such, it cannot be contended that the sum which was paid in August 2022 and which was not in contest was part of the subject matter of the suit. Consequently, it was erroneous for the Taxing Master to assume that the sum of Ksh. 21,887,897.00 which included payments for August 2022 was representative of the value of the subject matter.
21. The record shows that the court judgment was entered on 14th December 2023. As such, the payments by the Respondent for union dues that cover January 2024 to April 2024 as per items numbers 18 to 21 in the Respondent's tabulation cannot arguably be said to have been part of the value of the subject matter at the time the suit was heard and determined in December 2023. Yet, these amounts are included in the sum of Ksh. 21,887,895.00 which the Taxing Master took as the value of the subject matter for purposes of determining the instructions and getting up fees that was payable to the Claimant.
22. Having regard to the foregoing, it is apparent that the Taxing Master misconstrued the value of the subject matter of the

suit by taking into account figures which were not in contest at the time the suit was filed and determined. In the court's view, the value of the subject matter in the suit could not be discerned from the pleadings or judgment of the court. Similarly, the parties did not record a formal settlement which set out the value of the subject matter.

23. The tabulation of union dues which the Respondent filed in court and which contains amounts which cover periods which were not in contest in the suit cannot be said to represent the value of the subject matter of the suit. That tabulation was presented to demonstrate that the Respondent had no union arrears as at April 2024.
24. The value of the subject matter having not been obvious from the pleadings and judgment of the court and there being no recorded consent between the parties to speak to the exact amount of outstanding trade union dues between September 2022 when the Respondent fell in default and December 2023 when judgment was delivered, the Taxing Master ought to have come to the conclusion that he could not ascertain the value of the subject matter from either the pleadings, judgment or settlement between the parties, if any. As such, he ought not to have relied on the impugned sum of Ksh. 21,887,897.00 as representing the value of the subject matter.
25. It is also noteworthy that although the suit proceeded as undefended, the Claimant charged and the Taxing Master

allowed getting up fees. Yet, this item is only chargeable where a defense or other denial of liability has been filed or where issues for trial are joined by the pleadings.

26. The erroneous inclusion of this item in the list of allowable items in the Bill certainly inflated the eventual award of costs by a large amount. Although the court's decision is not premised on this observation, it is necessary to flag it for purposes of information.

Determination

27. The upshot is that the court finds that the Taxing Master committed an error of principle by relying on the sum of Ksh. 21,887,897.00 to determine instructions fees when this amount was not mentioned in the pleadings in the cause or judgment of the court or settlement between the parties.
28. As such, the reference dated 17th July 2025 succeeds with the consequence that the Taxation Order dated 10th July 2025 is hereby set aside.
29. The Bill of Costs dated 18th February 2025 to be placed before another Taxing Master for taxation.
30. Each party to bear own costs of the reference.

**Dated, signed and delivered on the 26th day of February,
2026**

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th 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