



**Mbunza v Sunbird Business Services (K) Ltd (Employment and Labour Relations Cause 277 of 2019) [2025] KEELRC 150 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 150 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 277 OF 2019**

**BOM MANANI, J  
JANUARY 30, 2025**

**BETWEEN**

**PATRICK MULI MBUNZA ..... CLAIMANT**

**AND**

**SUNBIRD BUSINESS SERVICES (K) LTD ..... RESPONDENT**

**RULING**

**Background**

1. Through a Statement of Claim dated 25<sup>th</sup> April 2019, the Claimant instituted the instant case against the Respondent alleging unfair termination of his contract of service. In the suit, the Claimant prayed for various reliefs including the following:-
  - a. Salary in lieu of notice Ksh. 2,046,000.
  - b. Outstanding bonus Ksh. 100,000.
  - c. 12 months' salary Ksh. 8,184,000.Total Ksh. 10,330,000.
2. The Respondent filed a response to the claim dated 4<sup>th</sup> June 2019. It denied that the Claimant was entitled to the amount claimed.
3. The record shows that the matter proceeded to trial with both parties giving evidence. In the trial court's decision rendered on 28<sup>th</sup> September 2023, the Claimant's suit was dismissed in entirety. The court granted the Respondent costs.
4. The record shows that following the aforesaid judgment, the Respondent filed a bill of costs dated 13<sup>th</sup> December 2023. Item one (1) of the bill sets out instruction fees of Ksh. 350,000 and getting up fees



of Ksh. 175,000 both totaling Ksh. 525,000. The amount is said to be based on the value of the subject matter based on the sum of Ksh. 10,330,000 as pleaded in the Statement of Claim.

5. After hearing the parties, the Taxing Master delivered her ruling on the bill of costs on 24<sup>th</sup> September 2024. She assessed instruction fees and getting up fees based on the sum of Ksh. 10,330,000 as pleaded in the Statement of Claim.
6. Aggrieved by this decision, the Claimant filed the instant reference. He contends that the Taxing Master committed an error of principle when she relied on the figure of Ksh. 10,330,000 contained in his pleadings as the purported value of the subject matter. As a result, he contends that she (the Taxing Master) ended up making an award of instruction fees which was manifestly excessive in the circumstances.
7. The Claimant contends that despite having pleaded the above sum, the award of compensation under section 49 of the *Employment Act* is left to the discretion of the trial court. As such, the plea of Ksh. 10,330,000 by no means reflected the value of the subject matter. He thus contends that it was erroneous for the Taxing Master to have relied on the plea of Ksh. 10,330,000 as set out in the Statement of Claim without regard for the principle that the discretion to ascertain what to grant remained with the trial court.
8. In its replying affidavit dated 18<sup>th</sup> October 2024, the Respondent supports the decision of the Taxing Master. Without more, the Respondent contends that the instant reference is frivolous and an abuse of the court process.
9. On 23<sup>rd</sup> October 2024, the parties agreed to prosecute the reference through written submissions. As such, the court issued directions in terms of the agreement of the parties setting the timelines for filing of the submissions with a return date of 28<sup>th</sup> November 2024 to fix a ruling date.
10. On 28<sup>th</sup> November 2024, the advocates for both parties attended court. The Claimant's advocate informed the court that he had filed and served his submissions in line with the directions which issued on 18<sup>th</sup> October 2024. On the other hand, the lawyer for the Respondent intimated that she was not going to file submissions on the application and that she will entirely rely on her short affidavit filed in response to the motion. As such, the court proceeded to fix the matter for ruling after affording the Claimant's lawyers one more chance to avail a hard copy of his submissions.

## **Analysis**

11. The single issue for determination in the reference is whether the Taxing Master committed an error of principle when she relied on the figure appearing in the Claimant's Statement of Claim to ascertain the value of the subject matter. A perusal of the taxation ruling indeed confirms that the Taxing Master used the sum of Ksh. 10,330,000 as pleaded by the Claimant to determine the value of the subject matter.
12. It is to be noted that at the time the Taxing Master sought to rely on the figure in the pleadings to ascertain the value of the subject matter, the suit had already been determined on the merits and there was a judgment on record. The trial court had dismissed the claim.
13. In the circumstances, what was the Taxing Master to have considered in determining the value of the subject matter? Was it the figure pleaded in the Statement of Claim or the final judgment by the trial court?



14. The Court of Appeal answered the above question in the case of Peter Muthoka & Another vs. Ochieng & 3 Others, Civil Appeal No. 328 of 2017; [2019] eKLR. In the matter, the court expressed itself on the issue as follows:-

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court. Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.”

15. In its decision in the case of Kenya Airports Authority v Otieno Ragot and Company Advocates (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) (Judgment), the Supreme Court concurred with the above reasoning by the Court of Appeal. It expressed itself on the matter as follows:-

“We concur and approve of the foregoing findings by the Court of Appeal on the factors to take into consideration when determining the value of the subject matter.”

16. In dealing with the same issue, the High Court in the case of D. Njogu and Co. Advocates vs. Kenya National Capital Authority, HC Misc. Applic. No. 21 of 2003; [2005] eKLR in which the Statement of Claim pleaded for Kshs. 82,706,408.60 together with interest at 30%, said as follows:-

“So, whilst I accept that the advocate may have been instructed to sue for not only the principal sum, but also for interest thereon, at a specific rate, that fact alone cannot mean that the claim would be successful. In other words, the court could dismiss the whole claim, or grant part of the principal sum. Alternatively, the court could grant judgement for the whole principal sum, but without interest, or even with interest at rates other than those claimed. Effectively, therefore the value of the subject matter of the suit would remain indeterminate until the court passed its verdict on the case.”

17. What emerges from the foregoing is that the mere fact that a party has pleaded an amount in his pleadings is not of itself sufficient reason to take that amount as representing the value of the subject matter especially in cases where the trial court has discretion to ultimately determine the amount to award (see D. Njogu and Co. Advocates vs. Kenya National Capital Authority (supra)). In such case, it is expected that the Taxing Master would take into account that the trial court could make an award which is different from the figure which had been pleaded. As such, the pleaded figure cannot be said to be representative of the value of the subject matter especially where the Defendant has contested the amount (see par 58 in the Supreme Court decision in Kenya Airports Authority v Otieno Ragot and Company Advocates (supra)).

18. It is also apparent from the decisions that where there is a final judgment in a cause, the Taxing Master should determine the value of the subject matter by referring to the judgment as opposed to the pleadings (see Peter Muthoka & Another vs. Ochieng & 3 Others (supra)). Where the judgment does not set out the value of the suit, then despite the abstract figures quoted in the pleadings, the Taxing



Master should arrive at the conclusion that the value of the subject matter cannot be ascertained from the final judgment of the court.

19. In the instant case, it is true that the Claimant claimed for Ksh. 10,330,000 comprising of notice pay, bonus and compensation for the maximum period of twelve years. However, it is apparent that the trial court had the ultimate discretion to determine the compensation to award him under section 49 of the *Employment Act* had he succeeded.
20. Further, it is apparent that although the Claimant had prayed for the aforesaid sum, the suit was dismissed. As such, the final decision of the trial court which was to be the guiding instrument in determining the value of the subject matter did not set out this value (see Peter Muthoka & Another vs. Ochieng & 3 Others (supra)). In the premises, the Taxing Master ought to have used her discretion to ascertain instruction fees as opposed to resorting to the figure in the Statement of Claim for this purpose.
21. This point was made by the Supreme Court in the case of Kenya Airports Authority v Otieno Ragot and Company Advocates (supra) when the learned Judges expressed themselves as follows:-

“In the event that value of the subject matter of a suit cannot be determined from either the pleadings, judgment or settlement by the parties, and the nature of the said suit is not provided for in Paragraph 1 of Schedule VIA, proviso (i) thereunder empowers a Taxing Officer to exercise his/her discretion in assessing instruction fees for such a suit.”

#### **Determination**

22. In the ultimate, I arrive at the conclusion that the learned Taxing Master committed an error of principle when she relied on the amount pleaded in the Statement of Claimant to determine instruction fees despite the fact that the amount to be awarded, if the Claimant had succeeded in the suit, was subject to the discretion of the trial court.
23. The Taxing Master erred in relying on the aforesaid figure to determine instruction fees despite the fact that the judgment of the court had not awarded any amount.
24. As such, I set aside the taxation order and direct that the file be placed before another Taxing Master of the court for fresh taxation.
25. Each party shall bear own costs for this reference.

**DATED, SIGNED AND DELIVERED ON THE 30<sup>TH</sup> DAY OF JANUARY, 2025.**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

..... for the Claimant/Applicant

..... for the Respondent

**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**

