



Nderitu & 93 others v Flower City (K) Limited (Cause E6499 of 2020) [2025] KEELRC 1114 (KLR) (4 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1114 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6499 OF 2020**

**AK NZEI, J
APRIL 4, 2025**

BETWEEN
SIMON MUHARI NDERITU & 93 OTHERS CLAIMANT
AND
FLOWER CITY (K) LIMITED RESPONDENT

RULING

Background

1. On 22nd November, 2023, this Court (Dr. Jacob Gakeri, J) delivered its Judgment on the suit herein and entered Judgment for the Claimants against the Respondent herein as follows:-

“ 148. In conclusion, Judgment is entered in favour of the Claimants against the Respondent in the following terms:-

- a. Declaration that termination of the Claimants employment was in violation of the provisions of the *Employment Act*, 2007.
- b. Salary for 15 days for the month of May 2019.
- c. Equivalent of 2 months salary.
- d. Costs of this suit.
- e. Interest at court rates from date hereof till payment in full.

149. For the avoidance of doubt, the foregoing reliefs are only applicable to those who authorised Mr. Simon Muhari Nderitu to represent them by signing the Letter of Authority on record.”



2. The Court's record herein shows that after delivery of this Court's said Judgment, the Claimants filed a Party and Party Bill of Costs dated 28th May, 2024, which this Court's Deputy Registrar, sitting as a Taxing Officer, subsequently taxed at Kshs.360,382/= vide a Ruling delivered on 30th July, 2024.
3. There is on record a letter by the Respondent's Advocates to the Court's Deputy Registrar, dated 1st August, 2024, asking for a certified copy of the Taxing Officer's said Ruling and objecting to the Taxing Officer's said decision (Ruling) regarding items 1, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21 – 23, 24 – 28, 44 – 58, 59 and 60 in the bill of costs. I have not seen on record any response to the said letter by the Taxing Officer.

The application dated 9th August, 2024

4. On 8th August, 2024, the Respondent filed a Chamber Summons application dated 9th August, 2024 seeking the following Orders:-
 - a. That there be a stay of execution in the matter pending the hearing and determination of the application.
 - b. That the Court be pleased to review the Taxing Master's Ruling and Award of 30th July, 2024 in respect of items: 1 (instructions fees and getting up fees), 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 21 – 23, 24 – 28, 44 – 58, 59 and 60 of the Claimant's Bill of Costs dated 28th May, 2024.
 - c. That costs be awarded to the Applicant.
5. The application, which is before me for determination, is expressed to be brought under Rules 2 and 11(1) and (2) of the [Advocates Remuneration Order](#). The application sets out on its face the grounds on which it is anchored, and is based on the supporting affidavit of Suryakant Manibhai Patel sworn on 9th August, 2024, which I have considered.
6. The application is opposed by the Claimants vide a replying affidavit and a supplementary affidavit of Simon Muhari sworn on 30th September, 2024 and 14th November, 2024 respectively, which I have considered.
7. In my view, the single issue for determination regarding the application herein is whether orders sought by the Respondent/Applicant are capable of being granted, in the circumstances of the case herein.
8. Although, pursuant to Schedule 6 Part – A of the [Advocates Remuneration Order](#), 2014, fees for taking instructions and getting up fees are to be reckoned based on the value of the subject matter as can be determined from the pleadings, Judgment or settlement between the parties, the Court in the present case did not, in its Judgment delivered on 22nd November, 2023, determine the amount payable to the Claimants by the Respondent/Applicant. This fact is clear from paragraphs 148 and 149 of the said Judgment, which I have deliberately reproduced in paragraph 1 of this Ruling. The Respondent/Applicant, and indeed both parties, ought to have addressed their minds to the issue of the undetermined Judgment sum before either moving to tax Party and Party Bill of Costs or to challenge such costs as (subsequently) taxed by the Taxing Officer. In its said Judgment, the Court only stated the formula to be used in determining the amount of money to be paid to (some) of the Claimants, but never determined the issue of how much was to be paid. Without a determination of the latter issue, the application challenging the Taxing Officer's decision cannot be entertained. None of the parties herein is shown to have either appealed against the Court's said inconclusive Judgment, or to have moved the Court (the trial Judge) regarding determination of the sum payable by the Respondent/Applicant to the Claimant/Respondents.



9. I have stated before, and will do so again in this matter, that in my view, value of the subject matter in employment suits is to be determined from the Court's Judgment. This is because in employment matters, parties usually state huge sums in their pleadings/statements of claim; sums which they believe that they are entitled to, but which Courts will rarely allow as claimed/pleaded upon taking evidence.
10. Although the Respondent/Applicant has also challenged the Taxing Officer's decision on other items apart from fees for taking instructions and getting up fees, a Taxation Reference to this Court cannot be considered in bits and/or in peacemeal. Those other items fall after the first two, fees for taking of instructions and getting up fees, which can only be determined once the value of the subject matter in the suit in issue is determined.
11. In view of all the foregoing, I make a finding that the Respondent/Applicant's Chamber Summons application dated 9th August, 2024 is without basis, and the same is hereby dismissed with costs.
12. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Gikunju for the Claimant/Respondents

Mr. Mituga for the Respondent/Applicant

