



Aura v Trans Nile Enterprises Limited (Employment and Labour Relations Cause 280 of 2019) [2025] KEELRC 1517 (KLR) (26 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1517 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 280 OF 2019**

MN NDUMA, J

MAY 26, 2025

BETWEEN

JOSEPH AURA CLAIMANT

AND

TRANS NILE ENTERPRISES LIMITED RESPONDENT

RULING

1. The applicant in the application before court dated 5/11/2024 seeks inter alia, review and that the court be pleased to order the deposit of taxed costs being Kshs 770,334.00, less the amount expressly acknowledged as received by the law firm of Kogai and Co. Advocates as security in respect of the Advocate's costs.

Facts

2. The Claimant filed application dated 24/4/2024 seeking leave to have the firm of Mob law Advocates come on record in place of the firm of Kogai & Company Advocates.
3. The court delivered its ruling on the application on 24/10/2024 and ordered that the firm of Kogai and Co. Advocates remain on record to advance execution of the judgement/decree dated 19/10/2023.
4. That Advocate/Client bill of costs was taxed on 10/9/2024 at Kshs. 770,334.00.
5. The Claimant has disputed the taxed Advocate/Client bill of costs and has filed a reference opposing the taxed costs.
6. Meanwhile the Claimant has brought this application for review of the ruling of the court dated 24/10/2024 under Rule 74(a) of the Employment and Labour Relations Court (Procedures) Rules, 2024 on grounds that the claimant has discovered a new and important matter of evidence which after the exercises of due diligence, was not within his knowledge or he could not produce it at the time when the decree was passed or the order made.



7. The Applicant states that before the ruling dated 24/4/2024 was delivered on 10/9/2024 the Advocate/Client bill of costs was taxed vide a ruling dated 10/9/2024 at Kshs. 770,334. That the said taxation (ruling) did not credit the partly paid fees in the sum of Kshs. 242,100.00 and part of the decretal sum in the sum of Kshs. 200,000.00 received and withheld by the Advocate hence triggering the filing of a reference to address the said money received or held by the Advocate on account of her legal fees in the main suit.
8. The above happening is relied upon as a fact that was not in the knowledge of the court at the time it delivered the ruling on 24/10/2024 and that on that basis, the court is invited to review its' ruling directing that the firm of M/s. Kogai and Co. Advocates continue to represent Claimant/Client in the execution of the decretal sum amounting of over Kshs. 3,143,480 even though the bill of costs taxed in favour of the said firm exclusive of the part payment totaled Kshs. 770,334.00 hence exposing the claimant/client to serious prejudice with regard to the matter of part payment and the part decretal sum already held by the Advocate aforesaid.
9. That the Applicant seeks to have the said ruling reviewed to the extent that it gave the Advocate unchecked authority to collect or execute for the decretal sum despite the serious issues of trust exhibited.
10. The court has considered the deposition and submission by the parties and is not satisfied that this application has met the threshold for review of a ruling by the court that delivered the same as set out under Rule 74 of the ELRC (Procedure) Rules 2024.
11. The Applicant has not demonstrated that there is discovery of new and important matter of evidence that was not in the knowledge of the Applicant at the time of the said ruling. The matter of part payment by the client to the advocate and the part decretal sum held by the Advocate are matters that were in the knowledge of the Applicant before the ruling dated 10/9/2024. There is no reason advanced as to why the Applicant did not raise these matters in that previous application.
12. The court finds no error also apparent on the face of the ruling. Indeed, the court finds that the application is an appeal guised as an application for review against the ruling of the court.
13. The court relies on the decision in Francis Ongo and another versus Jacob Kuwali Mangala (C.A. Civil Appeal No. 149 of 2001 (unreported) cited by the Advocate/Respondent in this application. The decision of fact and law reached by the court in the ruling dated 10/9/2024 constitute grounds of appeal and do not form a proper basis for review of the said ruling.
14. In any event the Applicant has lodged a reference to address the matter of payable costs between the Applicant and the Advocate and matters raised herein should be considered in the said reference.
15. Accordingly, the application is dismissed with costs.

DATED AT NAIROBI THIS 26TH DAY OF MAY 2025

Mathews Nduma

Judge

Appearance:

Mr. Ongaya for Applicant/Client

M/s. Nyabute for Advocate

Mr. Kemboi – Court Assistant

