



REPUBLIC OF KENYA



Munyasya v Kenya National Union of Teachers & another (Employment and Labour Relations Cause E457 of 2023) [2025] KEELRC 1936 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1936 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E457 OF 2023**

BOM MANANI, J

JUNE 30, 2025

BETWEEN

MIKE MUNYASYA CLAIMANT

AND

KENYA NATIONAL UNION OF TEACHERS 1ST RESPONDENT

**MORRIS KINYATTA MALUKI (SUED AS CHAIRMAN MWINGI BRANCH
EXECUTIVE COMMITTEE) 2ND RESPONDENT**

RULING

1. The Claimant instituted proceedings against the Respondents to challenge their decision to suspend him from office pending the processing of a proposed disciplinary case against him. He sought for the following reliefs:-
 - a. A declaration that the suspension was contrary to articles 41, 47 and 50 of *the Constitution* of Kenya 2010.
 - b. A declaration that the 2nd Respondent's decision to suspend him from duty was unduly influenced by the 1st Respondent.
 - c. A declaration that the Respondents' decision to stop his salary after he was suspended from duty amounted to unfair labour practice and constrictive termination of his services.
 - d. An order directing the 2nd Respondent to lift the suspension and reinstate him as a signatory to the 1st Respondent's bank accounts at its Mwingi branch.
 - e. Costs of the case.
2. On being served with the Statement of Claim, the Respondents filed a Notice of Preliminary Objection to the suit. They contended that the 1st Respondent's Constitution provides for internal dispute



resolution procedures which the Claimant ought to have invoked before approaching the court. As such, they posited that the suit was premature and the court was not seized of jurisdiction to entertain it in the first instance.

3. After hearing the objection, the court delivered its ruling on 30th November 2023 in which it agreed with the Respondents' sentiments. It held that the Claimant had moved it prematurely. As such, it held that it was not seized of jurisdiction to entertain the suit at that point in time. Consequently, it struck out the suit with costs to the Respondents.
4. Subsequent to the aforesaid decision, the Respondents presented their Bill of Costs dated 31st January 2024 seeking a total of Ksh. 2,665,261.00 as costs. Vide a ruling dated 8th July 2024, the Taxing Master assessed the costs in the matter at Ksh. 145,401.00.
5. Aggrieved by the decision, the Respondents filed the instant Reference. They contend that the Taxing Master committed an error of principle in taxing the Bill of Costs as aforesaid.
6. The Respondents, inter alia, aver that the Taxing Master irregularly invoked paragraph 58 of the Advocates Remuneration Order to treat the cause as a subordinate court matter thereby grossly understating the costs that they are entitled to. They further contend that the Taxing Master grossly understated the instruction fees that is due to them by failing to consider salient guidelines in taxing the impugned Bill of Costs.
7. Although the Claimant's Advocates were served with the Reference, they did not file a response to it. Further, they did not file submissions on the matter.

Analysis

8. It is trite that this court is not entitled to interfere with the discretion of a Taxing Master in assessing costs unless it is demonstrated that he (the Taxing Master) made an error of principle in the taxation process. Restating this principle, the Court of Appeal in the case of *Kamunyori & Company Advocates v Development Bank Of Kenya Limited* [2015] eKLR expressed itself on the matter as follows:-

“ Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on taxation unless it is based on 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 instructions fee is arrived at on the wrong principles, it will be set aside.”
9. Paragraph 58 of the Advocates Remuneration Order provides as follows:-

“In causes or matters which, having regard to the amount recovered or paid in settlement or the relief awarded, could have been brought in a resident magistrate's or other subordinate court, costs on the scale applicable to subordinate courts only shall be allowed unless the judge otherwise orders.”
10. According to the rule, the Taxing Master is entitled to assess costs in a cause using the subordinate court's scale if:-
 - a. The amount recovered in the matter or the settlement recorded by the parties falls within the jurisdiction of the subordinate court.
 - b. The relief granted by the trial Judge could have been granted by the subordinate court.
11. Absent the foresaid, the Taxing Master cannot apply the subordinate court scale to a matter that was prosecuted before the High Court or a Court of Equal Status to the High Court. To do otherwise would amount to an error of principle.



12. In the instant dispute, the trial court did not grant any monetary award in the primary suit. As such, it cannot be said that either of the parties recovered any sums that fell within the jurisdiction of the Magistrate's Court.
13. It is therefore unclear why the Taxing Master invoked the said provision of the Advocates Remuneration Order to guide him in taxing the Respondents' Party and Party Bill of Costs. In my view, the Taxing Master's decision in this respect constituted an error of principle.
14. The Bill of Costs shows that whereas the Respondents sought Ksh. 2,500,000.00 as instructions fees, the Taxing Master awarded them Ksh. 75,000.00 on this item. However, his ruling does not disclose the reasons for this decision. The Taxing Master does not give the criteria for his conclusion that the Respondents were deserving of instruction fees of Ksh. 75,000.00 and not any lesser or greater amount.
15. To quote the Taxing Master verbatim, he stated that "item 2 is taxed at Ksh. 75,000 all circumstances considered". However, the circumstances which he considered in arriving at this conclusion are not discernible from the ruling.
16. Whilst it is true that a Taxing Master is entitled to exercise his discretion to determine instruction fees where he cannot discern the value of the subject matter from the pleadings, judgment or settlement arrived at by the parties, this discretion ought to be exercised judiciously and not arbitrarily. As such, the Taxing Master should be able to justify how he arrived at the figure he has granted.
17. The foregoing has been restated in a number of judicial pronouncements. In *Republic v Minister for Agriculture & 2 others Ex-parte Samuel Muchiri W'Njuguna & 6 others* [2006] KEHC 3504 (KLR), the learned Judge emphasized the need for a Taxing Master to demonstrate the criteria for his decision to enable the parties to the action to perceive it with ease.

Determination

18. The upshot is that I arrive at the conclusion that the Taxing Master committed errors of principle in the taxation that resulted in the impugned Taxation Order.
19. As a result, the Taxation Ruling dated July 8, 2024 is set aside.
20. The matter is remitted to another Taxing Master for fresh taxation.
21. Each party to bear own costs for the Reference.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JUNE, 2025.

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

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

