



Njore v Decasa Hotel (Cause 1478 of 2016) [2025] KEELRC 2060 (KLR) (11 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2060 (KLR)

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

CAUSE 1478 OF 2016

AK NZEI, J

JULY 11, 2025

BETWEEN

WILLIAMSON MOSES NJORE CLAIMANT

AND

DECASA HOTEL RESPONDENT

RULING

1. The application before me for determination is the Respondent/Applicant's Notice of Motion dated 8th November, 2024 and expressed to be brought under Article 50(1) of the [Constitution of Kenya 2010](#), Section 1A, 1B and 3A of the [Civil Procedure Act](#), Order 12 Rule 7 and Order 51 of the [Civil Procedure Rules](#). The Applicant seeks the following Orders:-
 - a. That the Court be pleased to set aside, vary, vacate and/or review the ex-parte Ruling and Orders issued on the 23rd of October, 2024.
 - b. That the Court be pleased to stay the execution of the Party and Party Bill of Costs pending the hearing and determination of the application.
 - c. That the Court be pleased to grant leave to the Applicant to file response and/or objection to the Notice of Taxation and Party and Party Bill of Costs dated 25th September, 2024.
 - d. That costs of the application be provided for by the Respondent.
 - e. That the Court grant further orders and directions as it may deem fit and just.
2. The application sets out on its face the grounds on which it is brought, and is anchored on the supporting affidavit of Michael Kimani Horeria Advocate sworn on 8th November, 2024. It is deponed in the said affidavit:-
 - a. that on or about 25th September, 2024, the Respondent's Advocates, J. M. Onyancha & Associates filed a Party and Party bill of costs and a Taxation Notice in the suit herein against the



Applicant, but failed to effect service on the Applicant's Advocates as by law required; but on 2nd October, 2024 purported to file an affidavit of service falsely alleging that a taxation notice had been served on the Applicant's Advocates by email. That no such email communication and taxation notice had been received by the Applicant's Advocates.

- b. that the Respondent's affidavit of service conspicuously lacks any annexure of the alleged email or delivery receipt, and does not demonstrate prima facie any evidence of the purported service.
 - c. that the Applicant was precluded from contesting the taxation, and is duly prejudiced by the ex-parte Ruling and orders granted on 23rd October, 2024 in its absence.
 - d. that it is within the jurisdiction and inherent powers of this Court to set aside ex-parte orders granted without proper service, and to thereby restore fairness by allowing the Applicant an opportunity to be heard on the merits of the taxation proceedings.
3. The application is opposed by the Claimant/Respondent vide his replying affidavit sworn on 13th December, 2024, deponing that the Applicant's Advocates were served with a Taxation Notice dated 25th September, 2024 by email via their official email address; and that litigation must come to an end so that the Claimant/Respondent is not denied the fruits of the Judgment herein.
 4. Both parties filed written submissions for and against the application pursuant to this Court's directions in that regard; which I have considered.
 5. It is evident from the Court's record herein and from the Applicant's application before me that what the Respondent/Applicant is seeking to set aside are the Taxing Officer's Orders contained in her Ruling delivered on 23rd October, 2024, taxing the Claimant/Respondent's Party and Party Bill of Costs dated 25th September, 2024.
 6. It is trite that this Court's jurisdiction to vary or to set aside a Taxing Officer's taxation order can only be invoked by a dissatisfied party by filing an appropriate reference to this Court pursuant to Rule 11 of the [Advocates Remuneration Order](#), which provides as follows:-

- “ 11
- (1) Should any party object to the decision of the taxing officer, he may within fourteen days from the date of the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a Judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds for his objection.
 - (3) Any person aggrieved by the decision of the Judge upon any objection referred to such Judge under paragraph (2) may, with the leave of the Judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in



writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

7. It is trite that where a specific procedure is specifically provided in law for taking out or presenting any Court proceedings, that procedure must be followed.
8. The procedure set out in Rule 11 of the *Advocates Remuneration Order* must always be followed by any party aggrieved by a taxing officer’s decision, for whatever reason. Where, for whatever reason, the aggrieved party does not commence the objection process within the time fixed by subparagraph (1) and subparagraph (2) of the Rule, the party may appropriately move this Court for enlargement of time as may be appropriate.
9. In view of all the foregoing, orders sought by the Respondent/Applicant are not capable of being granted. No order for enlargement of time under Rule 11(4) of the *Advocates Remuneration Order* has been sought by the Applicant to commence objection proceedings out of time, and this Court cannot issue substantive orders not specifically sought.
10. For record purposes, the term “High Court” as used in Rule 11(4) of the *Advocates Remuneration Order* refers to this Court in the context of the suit herein, by virtue of Article 162(2)(a) of the *Constitution of Kenya 2010*.
11. I return a finding that the Respondent/Applicant’s Notice of Motion dated 8th November, 2024 is both incompetent and devoid of merit. The same is hereby dismissed with no order as to costs.
12. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY 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:

Mr. Ondieki for the Claimant/Respondent

No appearance for the Respondent/Applicant

