



**Job Nyasimi Momanyi t/a Nchogu, Omwanza & Nyasimi Advocates v Kenyatta National Hospital
(Miscellaneous Application 21 of 2019) [2024] KEELRC 316 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 316 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 21 OF 2019**

J RIKA, J

FEBRUARY 22, 2024

BETWEEN

**JOB NYASIMI MOMANYI T/A NCHOGU, OMWANZA & NYASIMI
ADVOCATES ADVOCATE**

AND

KENYATTA NATIONAL HOSPITAL CLIENT

RULING

1. The Client filed an Application dated 20th February 2024, seeking inter alia, that pending hearing and determination of the Reference, an order of stay of execution of the Ruling delivered by the Taxing Master, Hon. David O. Mbeja, Deputy Registrar on 22nd February 2024, and all consequential orders arising thereon, is issued.
2. The Application is based on the Affidavit of Calvin Nyachoti, the Client's Corporation Secretary, sworn on 20th February 2024.
3. He explains there was a dispute in E&LRC Cause No. 31 of 2015, between the Client and a workplace Trade Union KUDHEIHA. Judgment was delivered in that Cause, on 24th October 2018. The Advocate herein represented the Client Hospital.
4. He initially filed an Advocate-Client Bill of Costs dated 29th January 2019 for the sum of Kshs. 358,491,673.
5. The Bill was taxed at Kshs. 24,436,357 on 14th May 2019.
6. The Client filed a reference dated 2nd July 2019 disputing taxation.
7. The Court delivered a Ruling dated 12th May 2020, setting aside taxation, and directed that the Bill is taxed afresh, before a different Taxing Master.



8. The Bill of Costs was remitted to a different Taxing Master for re-taxation as ordered in the reference.
9. On 22nd January 2024, the different Taxing Master allowed the Bill of Costs as filed, at a staggering sum of Kshs. 358,491,673.
10. The Client has approached the Court under Certificate of Urgency on a second reference, on the ground that the fresh taxed amount is erroneous, inordinately high, manifestly excessive and grossly inflated.

The Court Finds: -

11. There is a world of difference between the costs as taxed in the first taxation, and the second taxation, which tends to support the submission by the Client, that the costs granted on the second taxation, are manifestly excessive.
12. It is difficult to see from the record, how the second taxation did not result in any items taxed off, and the Court is persuaded that an ex parte order of stay of execution of the Hon. Taxing Master's Ruling, dated 22nd January 2024 is merited.
13. The Court is also of the view that the error apparent on the face of the record, can be corrected with the concurrence of the Advocates for the Parties, instead of engaging in another prolonged round of legal argument on the Bill of Costs, in this second reference.

It Is Ordered

- a. Execution of the Ruling delivered by Taxing Master dated 22nd January 2024, and all consequential orders, is stayed.
- b. The Application shall be served upon the Advocate.
- c. The Advocate to file and serve his Response, within 14 days of service.
- d. In the meantime, the Advocates to engage at their own level, and strike a compromise on the reference.
- e. Mention on 14th March 2024.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, THIS 22ND DAY OF FEBRUARY 2024.

JAMES RIKA

JUDGE

