



Cheruiyot & 15 others v SBI International Holdings (AG) Ltd (Cause 141 of 2017) [2024] KEELRC 863 (KLR) (20 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 863 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 141 OF 2017
S RADIDO, J
MARCH 20, 2024**

BETWEEN

- RONO CHERUIYOT 1ST CLAIMANT**
- PAUL KIPRONO 2ND CLAIMANT**
- KIRUI EDWARD KIPLAGAT 3RD CLAIMANT**
- HILLARY K BOR 4TH CLAIMANT**
- DENNIS KIBET 5TH CLAIMANT**
- DANIEL MADAFU 6TH CLAIMANT**
- GEORGE GITAU CHUMA 7TH CLAIMANT**
- EDWARD KEMEI 8TH CLAIMANT**
- PETER MWANGI NJAGUA 9TH CLAIMANT**
- FRANCIS MUTUKU MUTUA 10TH CLAIMANT**
- KIPKORIR KOECH 11TH CLAIMANT**
- BENARD KIPKOECH 12TH CLAIMANT**
- ERICK KIPSANG KIRUI 13TH CLAIMANT**
- REUBEN KIBET KOSGEI 14TH CLAIMANT**
- KIPRONO FREDRICK KOECH 15TH CLAIMANT**
- CATHERINE KIMANI KIRERA 16TH CLAIMANT**

AND

SBI INTERNATIONAL HOLDINGS (AG) LTD RESPONDENT



RULING

1. Lister Auctioneers (the applicant) lodged a Party to Party Bill of Costs with the Court on 16 February 2021 seeking the taxation of costs said to have been allowed after the determination of a Motion dated 8 October 2020.
2. When served, SBI International Holdings (AG) Ltd (the Respondent) raised a Notice of Preliminary Objection dated 17 February 2021.
3. Upon hearing the Objection, the Taxing Officer delivered a Ruling on 31 October 2023, in which she upheld the Notice of Preliminary Objection on the ground that the applicant auctioneer was not competent to file a Party to Party Bill of Costs as he was not a party to the proceedings.
4. On 19 January 2024, the applicant filed a Chamber Summons seeking orders:
 - i. That the time for lodging a Reference as against the decision of the Taxing Master dated 31st October 2023 be enlarged and upon the grant of the said enlargement, the Reference herein be deemed as validated.
 - ii. That the decision of the Taxing Master dated 31st October 2023, be set aside, an order be made that the applicant's bill of costs be reinstated and be taxed by the Taxing Master.
 - iii. That the costs of this Reference be awarded to the Respondent namely Lister Auctioneers.
5. The main grounds advanced in support of the Motion were that the delay to bring a Reference was caused by the time taken to obtain a copy of the Ruling and get instructions (sent on 22 November 2023), and that the Taxing Officer had committed an error of principle in rejecting the Bill of Costs.
6. The applicant attributed the failure to give instructions to the fact that she was away from the office due to the festive season.
7. When the Summons came up on 22 February 2024, the Claimants and Respondents were absent. The Court allowed the applicant to make brief oral submissions.
8. The Court has considered the Summons, affidavits and submissions and come to the view that the orders sought should be declined for the reasons that follow.
9. One, the applicant was present on 4 October 2023, when the Taxing Officer fixed the Ruling for 31 October 2023. The applicant failed to attend the delivery of the Ruling and no explanation has been given for the failure to attend the Court.
10. Two, the applicant's advocate has not explained why it took him up to 22 November 2023 to seek instructions from the applicant after the delivery of the Ruling.
11. Three, apart from making a vague reference to have taken a break from the office for the festive season, the applicant has not disclosed when she took a break or closed her offices. Just for the record, the Courts took a break on or around 21 December 2023.
12. Fourth, the applicant was expected to file an objection within 14 days of the Ruling. There is nothing on record to suggest that the applicant filed the objection.
13. Lastly, despite the directions by the Deputy Registrar on 21 January 2024 that the application be served, there is no evidence on record that the applicant served the other parties.



Conclusion and Orders

14. Considering the above, the Court declines to exercise its discretion in favour of the applicant and the Chamber Summons dated 15 January 2024 is dismissed with costs to the Respondent.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 20TH DAY OF MARCH 2024.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimants did not participate

For Respondent Prof Albert Mumma & Co. Advocates

For applicant Wambua Kigamwa & Co. Advocates

Court Assistant Chemwolo

