



Ogola and 46 others v Raghbir Singh Sadhu t/a Hotel Royale (Reference 16 of 2013) [2024] KEELRC 754 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 754 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
REFERENCE 16 OF 2013
CN BAARI, J
APRIL 11, 2024
IN THE MATTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA
AND
IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER
AND
IN THE MATTER OF TAXATION OF THE ADVOCATE/CLIENT BILL OF COST
BETWEEN
JOHN OSEWE OGOLA AND 46 OTHERS APPLICANT
AND
RAGHBIR SINGH SADHU T/A HOTEL ROYALE RESPONDENT

RULING

1. Before Court is the Applicant's Motion dated 9th October 2023, brought pursuant to Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Rules 11 (2) and 13 of the Advocates Remuneration Order, Order 51 Rules 1 & 15 of the Civil Procedure Rules, 2010. The Applicant seeks orders that: -
 - i. Spent
 - ii. There be a stay of any further proceedings herein.
 - iii. The court do set aside the decision/orders of the taxing master delivered on 26th September 2023 on the Claimant's Bill of Cost dated 23rd January 2023, striking out the Bill of Cost for lack of jurisdiction.
 - iv. The honourable court be pleased to order that the Claimant's Bill of cost dated 23rd January 2023 be re-taxed.



- v. In the alternative to prayer 4, the Honourable Court be pleased to remit the Bill of cost dated 23rd January 2023 for re-taxation before a different taxing officer with appropriate directions thereof.
 - vi. Costs of the application be provided for
2. The application is supported by grounds on the face of the motion and the affidavit of William Odongo Matoro, sworn on 9th October, 2023. The Applicants avers that its Bill of costs covering the period 16th March 2016 to 23rd January 2023, was wrongly struck out by the taxing master. They contend that the taxing master was wrong in considering irrelevant matters while declining jurisdiction.
 3. It is their assertion that the Bill of costs pending at the court of appeal is different. They state that the Deputy Registrar is empowered to tax bills in accordance with the Remuneration Order. Reliance was had to the case of *Mugambi & Co. Advocates v John Okal Ogwayo & another* [2013] eKLR to buttress this position.
 4. The Applicants fault the taxing master for finding that she needed permission to tax a bill, yet taxation matters only reach the judge by way of a reference.
 5. The Respondent on its part opposed the motion vide grounds of opposition dated 8th November 2023. It avers that the magistrate was right in striking out the bill costs, and that the application was devoid of merit and ripe for dismissal with costs.
 6. It asserts that the issue of costs payable is pending before the Court of Appeal and thus it would be improper for the bill to be taxed before the Court of appeal concludes the matter. The Respondents urge this court to interpret the Applicant's conduct of filing references all the time as a ploy to keep this matter in court in perpetuity.
 7. On the Strength of the foregoing, the Respondent urges this court to dismiss the application with costs.
 8. Parties canvassed the application through written submissions, and which have been duly considered.

Determination

9. The first ruling on the bill of costs filed in this matter was rendered on 27th March, 2019. In that ruling, the bill was taxed at Kshs 3,600,000. A reference against the said ruling was filed, and which was heard and determined by Justice Nduma on 27th November, 2020, setting aside the taxation in its entirety and directing that the bill be taxed a fresh.
10. The bill was then placed before Hon. Maureen Shimenga who taxed the bill and delivered a ruling on 9th September, 2021. She taxed the bill at Kshs 496,453/- down from the initial Kshs 3,600,000/-.
11. Unrelenting, the Applicant filed a reference against the ruling of Hon. Shimenga, which this Court heard and dismissed vide its ruling of 21st January, 2022.
12. The instant reference, refers to yet another bill of costs by the Applicants which Hon. Rashid dismissed citing lack of jurisdiction. In declining jurisdiction, the Taxing Master cited lack of express directions on costs from the Judge, and the fact that the issue of costs is still pending determination by the Court of Appeal.
13. Although the Applicant avers that the issue pending at the Court of Appeal is with regard to a different bill of costs, the details or nature of the matter/appeal pending before the Court of Appeal has not been disclosed by the Applicants. The court is not lost on the fact that this is the Applicants' appeal,



hence the information in regard thereof, is within their knowledge, and which they have elected not to disclose.

14. In the absence of the full appreciation of what is pending before the Court of Appeal, this Court runs the risk of contradicting that Superior Court.
15. Further and most importantly, the record, does not show an award of costs to the Applicants to support the Bill of costs subject of this reference. It is trite law that taxation flows from an order of the court.
16. In whole, I find the Applicants' application dated 9th October, 2023, devoid of merit and a gross abuse of the court process.
17. It is dismissed with costs to the Respondent.
18. It is so ordered.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 11TH DAY OF APRIL, 2024.

C. N. BAARI

JUDGE

Appearance:

Ms. Nyakwana h/b for Mr. Mwamu for the Claimants/Applicants

Ms. Okaka h/b for Mr. Yogo for the Respondent

Erwin Ongor- C/A

