



**Morara Omoke t/a Morara Omoke Advocates v Board of Trustees, Kenya
Broadcasting Corporation (KBC) Staff Retirement Benefits Scheme
(Sued on Behalf of the Scheme) (Miscellaneous Review Application
E002 of 2024) [2024] KEELRC 2071 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2071 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS REVIEW APPLICATION E002 OF 2024**

K OCHARO, J

JULY 31, 2024

BETWEEN

MORARA OMOKE T/A MORARA OMOKE ADVOCATES APPLICANT

AND

**BOARD OF TRUSTEES, KENYA BROADCASTING CORPORATION (KBC)
STAFF RETIREMENT BENEFITS SCHEME RESPONDENT
SUED ON BEHALF OF THE SCHEME**

*(Being a Reference from the Ruling of the Taxing Officer in the Employment
and Labour Relations Court at Nairobi, Hon. Aziza Ajwang, delivered
on December 22, 2023 in Miscellaneous Application No. E117 of 2023)*

RULING

1. On the 10th June 2024, this court gave the following directions thus:
 - a. The Applicant to file and serve a response to the cross-reference contemporaneously with submissions on his preliminary objection.
 - b. The Respondent to file and serve response submissions to the applicant's submissions on the Preliminary Objection, plus submissions on its cross-reference.
 - c. The Applicant shall file response submissions to the submission on the cross reference within 10 days of service.
 - d. The court shall deliver an all-inclusive ruling addressing the preliminary objection, the cross reference (if the preliminary objection is not upheld), and the reference.



- e. Mention 10th July 2024 to check on compliance and picking a ruling date.
2. When this matter was placed before this court on the 10th July 2024 for the purpose mentioned above, Counsel Mr. Alex Kubo addressed the court, stating that he had just been instructed by six (6) pensioners who had an interest in the instant matter.
3. According to Counsel, the pensioners desire to file an application for them to be enjoined in this reference, and leave to file a response to the reference. In the pensioners' view, their trustees have breached their fiduciary responsibility. They failed to place forth a pivotal document before the Deputy Registrar (Taxing Master), a contract between the Applicant and the Respondent.
4. As a result, Counsel urged the court to defer any preparation and delivery of the ruling until after the intended application is heard and determined.
5. Counsel Nyaga for the Applicant vehemently opposed the application by Counsel Mr. Kubo. His opposition anchored on the following premises;
 - a. Counsel Kubo was not on record as appearing for any party having not filed any notice of appointment as per law required. As a result, all his submissions, and the application were void.
 - b. The court cannot give the order sought as there is no application for joinder on record.
 - c. The instant matter being a reference against an exercise of discretion by the taxing master, no additional evidence can be allowed. Further, this court did render itself on the issue on 18th March 2024 on the issue of additional documents. The court's decision was in line with the decision of the Court of Appeal in the case of *Otieno Ragot vs. National Bank*, Civil Appeal 60 and 62 of 2017 (2020) JELR (CA).
 - d. The move by Counsel is orchestrated to impede delivery of the Ruling on the reference. Considering that the application is made inexplicably too late in the day, equates to an abuse of the court process.
6. After hearing submissions by the parties, I ordered;

“This court has to render itself on the issue raised by Counsel Alex, if what he has raised is found to have merit, I will defer the fixing of a ruling date until the application alluded to is heard and determined. If I find it destitute in merit, I shall proceed to fix the reference for ruling.”

7. I have carefully considered the submissions by the two Counsels and hesitate not to take a clear view that the application by Counsel Alex must fail for the following reasons;
 - a. On 18th March 2024, Counsel Mr. Gichomba sought for leave of the court to file a further affidavit to bring on board an agreement that was between the Applicant and the Respondent, agreement which had not been placed before the taxing master. The application was strongly opposed by Counsel Mr. Nyaga for the Applicant.

Upon considering the submissions by both Counsel, this court held inter alia;

“The proceedings before this court are by nature a reference flowing from the taxation of an Advocate – Client Bill of costs, by the taxing master of this court.

Under the *Advocates Act*, in my understanding of the law, in determining the reference this court can only restrict itself to the material that was placed before the



officer. There is no provision of law allowing bringing on board of new documents in proceedings like are the current. As a result, I decline the leave sought”.

It is clear therefore, that I rendered myself or the issue of filing additional documents and more specifically the contract. As the intending application is expressed to be to enable on boarding of the contract as additional evidence, the principle of res judicata cannot allow. The filing and hearing of the application shall be a waste of time, breaching this court’s overriding objective, an expeditious disposal of matters.

- b. Counsel Alex is not properly on record having not filed any notice of appointment. He cannot agitate for any orders successfully for any person therefore.
 - c. The attempt to revisit a matter over which I had already pronounced myself on cannot meet any better description other than, “an abuse of the court process”.
8. In sum, the application by Counsel Alex Kubo is declined. This Court shall deliver the ruling on the cross-reference, preliminary objection and reference on the 18th December, 2024.

READ, DELIVERED AND SIGNED THIS 31ST DAY OF JULY, 2024.

OCHARO KEBIRA

JUDGE

In the presence of:

Mr. Nyaga for Applicant

Mr. Gichamba for Respondent

Mr. Kubo for intended Interested Party

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

