



Kimeto v Kaka & 3 others (Sued in Their Capacities as Office Bearers of Kenya Association of Travel Agents) (Cause 1375 of 2015) [2024] KEELRC 2563 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2563 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1375 OF 2015
J RIKA, J
OCTOBER 24, 2024**

BETWEEN

JACKLINE CHEPKEMEI KIMETO CLAIMANT

AND

SHAFI GREWAL KAKA 1ST RESPONDENT

JULIE DABALLY SCOTT 2ND RESPONDENT

MOHAMMED WANYOIKE 3RD RESPONDENT

FEMIAN DAWOODIA 4TH RESPONDENT

**SUED IN THEIR CAPACITIES AS OFFICE BEARERS OF KENYA
ASSOCIATION OF TRAVEL AGENTS**

RULING

1. The Claimant, an Advocate of the High of Kenya brought this Claim for unfair and unlawful termination against her former Employers, the Respondents herein.
2. The Claim was granted by the Hon. Judge Maureen Onyango, stationed at E&LRC Eldoret, on 23rd March 2023, in the sum of Kshs. 1,651,000, plus costs and interest.
3. The Claimant was paid the principal sum. The remainder dispute, in on costs.
4. The Party-Party Bill of Costs was taxed by the Hon. Deputy- Registrar, at Kshs. 2,423,600.
5. Taxation was done through Miscellaneous Application No. E047 of 2024.
6. It was explained by the Claimant that she opted to tax her Party-Party Bill of Costs, through a Miscellaneous Application, because the original file No. 1375 of 2015, went missing after Judgment was delivered.



7. The Bill of Costs was taxed on 21st May 2024, and a Certificate of Costs issued, on 30th May 2024.
8. Subsequently, the Claimant sought to execute on her costs through Dikemwa Auctioneers. A warrant of execution issued on 4th July 2024.
9. The Respondents made a reference on the Bill of Costs, through their Application dated 14th June 2024. They challenge the Ruling on taxation. They also applied for stay of execution of the warrant, pending hearing and determination of the reference.
10. This Court declined to hear the various Applications made under the Miscellaneous Application, and directed that the original file is traced, or in default, the original file is reconstructed.
11. The original file has thankfully been traced, with the Court's Proceedings and Judgment, all properly preserved, in their original form.
12. When the Parties appeared before this Court under the bare Miscellaneous Application, it was difficult for the Court to make informed orders, without the benefit of the complete record. The Judgment subject matter of the execution proceedings and reference, was not readily available. It was not even possible from the Miscellaneous Application, for the Court to know that the Claimant appeared as a Claimant / Employee against the Respondents, rather than an Advocate instructed to act for the Respondents. It was not clear if what was taxed was a Party-Party Bill of Costs, or an Advocate-Client Bill of Costs. There can be no good substitute to an original file.
13. Against this backdrop, the Court undertook to make a Ruling, giving directions on the next course of action.
14. The pending issue is principally, on the hearing of the reference, which the Respondents are entitled to prosecute.
15. Other related Applications may be canvassed, during the hearing, or after the reference has been determined.
16. It is noted that the Hon. Principal Judge, Byram Ongaya, had issued interim orders for stay of execution of the warrant, on 11th July 2024.
17. The original file having been traced, and noting that the Miscellaneous Application was opened on account of the original file not being traced, it is prudent that the Miscellaneous Application is merged with the original file, for the sake of an orderly record of the Court.
18. It is noted that this is an old Claim, and although the Claimant has received the principal sum, she has not received her costs as granted by the Court.
19. Both Parties approached the Court under Certificate of Urgency after Judgment.

It is ordered: -

- a. Miscellaneous Application Number E047 of 2024 is consolidated with Cause Number 1375 of 2015.
- b. Cause Number 1375 of 2015 shall be the reference file.
- c. The reference Application shall be scheduled for hearing before the Principal Judge Byram Ongaya, on accelerated basis.
- d. Pending its hearing, the orders staying execution of the warrant are confirmed.



- e. Other Applications peripheral to the reference, may be canvassed later.
- f. Mention before the Principal Judge on a date to be assigned by the Deputy- Registrar, on accelerated basis.
- g. In the meantime, the Deputy Registrar to take all the necessary action[s], to ensure that the consolidated file is always safe and accessible to the Parties.
- h. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 24TH DAY OF OCTOBER 2024.

JAMES RIKA

JUDGE

