



**Ayugi v National Housing Corporation & 4 others (Cause
367 of 2017) [2023] KEELRC 680 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 680 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 367 OF 2017
CN BAARI, J
MARCH 16, 2023**

BETWEEN

STEPHEN AYUGI CLAIMANT

AND

NATIONAL HOUSING CORPORATION 1ST RESPONDENT

INSPECTOR AGGREY OMONDI 2ND RESPONDENT

COMMISSIONER OF POLICE 3RD RESPONDENT

THE PERMANENT SECRETARY 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. This ruling relates to the 1st Respondent's Chamber Summons application dated January 16, 2023, brought pursuant to paragraph 11 sub-paragraph (1) & (2) of the [Advocates Remuneration Oder](#), Order 50 Rule 6 of the [Civil Procedure Rules](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#). The 1st Respondent/Applicant seeks orders that: -
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. Time within which to submit a reference of the decision of the taxing master rendered on October 14, 2022, be enlarged to the date of filing hereof, and this application be deemed a reference of the said decision duly filed within the time so enlarged.



- v. The decision of the taxing master to deal with the separate bills of the Claimant against the 1st Respondent and against the 2nd, 3rd, and 4th Respondents respectively together be set aside.
 - vi. The taxation of the Claimant's party and party costs against the 1st Respondent and against the 2nd, 3rd, and 4th Respondents respectively as one taxation be set aside.
 - vii. The Claimant's bill of costs against the 1st Respondent be remitted back for consideration and taxation thereof separately and distinctively from the Claimant's bill of costs against the 2nd, 3rd, and 4th Respondents.
 - viii. The Costs of this application be provided for.
2. The application is supported by grounds on the face thereof and the affidavit of William Kimutai Keitany sworn on January 16, 2023. The crux of the application is that the 1st Respondent is facing threats of imminent execution for recovery of a decretal award already paid, and for taxed costs of the Claimant's bills of costs against the Respondents herein, and which bills were separate and distinct.
 3. The 1st Respondent further avers that although the ruling on the taxation was reserved for July 9, 2020, the same was rendered on October 14, 2022, without being notified, and that it only became aware of the decision on January 5, 2023.
 4. The 1st Respondent avers that the taxing master erred when she dealt with two bills of costs against the 1st Respondent and against the 2nd, 3rd, and 4th Respondents together, instead of separately and distinctively, with the result that there is no clarity as to what the costs claimed against each party was taxed at. The 1st Respondent further avers that the taxing master erred when she directed that costs be shared between the Respondents without stating in what sums or proportions the costs were to be shared.
 5. The Claimant opposed the application vide a replying affidavit sworn by Stephen Ayugi, the Claimant herein, on February 6, 2023. The Claimant avers that the court set a date for ruling on the taxation and issued notice to him through his Advocates for October 14, 2022, and which he believes was also issued to the other parties to the suit, as is the practice.
 6. The Claimant further avers that court in the ruling referred to herein, taxed the two bills of costs at Kshs 616,535. It is the Claimant's position that the 1st Respondent's assertion that it was not issued notice or was not aware of the ruling is not true, and the instant application is only meant to delay the ends of justice by denying him the fruits of his judgment.
 7. The Claimant prays that he be allowed to execute the decree together with the certificate of costs issued in this matter.
 8. Parties urged the application orally on February 7, 2023, where Counsels reiterated their grounds in support and those in opposition.

Analysis and Determination

9. I have considered the application by the 1st Respondent, the grounds, supporting affidavit, the replying affidavit and oral submissions for and against the application. The issue for determination is whether the application has any merit and therefore whether the orders sought should be granted.



10. In *Edith Gichungu Koine vs Stephen Njagi Thoithi* [2014] eKLR Odek JJA, stated thus on enlargement of time:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

11. The taxation subject of this suit was heard in June, 2020, with a ruling reserved for 9th July, 2020. This ruling was not delivered until later on 14th October, 2022.

12. The ruling subject of the reference was rendered on 14th October, 2022, and this application filed on 16th January, 2023. The time between delivery of the ruling and the filing of the instant application is three months and two days.

13. Premised on the time taken to deliver the ruling, and for lack of prove that notice of the ruling was issued upon the 1st Respondent, I deem the grounds for extension of time sufficient to justify the enlargement sought.

14. Further, the ruling subject herein, was to be delivered in July, 2020, and the Claimant has not shown effort put to have the ruling rendered timeously, and which confirms that he will not suffer prejudice should the time be enlarged and the intended execution stayed.

15. In *Kamlesh Mansukhalal Damki Patni Vs Director of Public Prosecution & 3 Others* [2015] eKLR, the Court of Appeal stated thus: -

“It suffices to comment that a court of law should be hesitant at closing the door to the corridors of justice prior to a litigant being heard on his complaint.....”

16. The documents exhibited by the 1st Respondent confirm that the decretal sum was settled vide Cheque No 035543 drawn on September 17, 2019, and that the only outstanding sum in respect of the 1st Respondent is the costs of the suit and interests.

17. In my view, the reference herein does not challenge the result of the taxation, but rather, the apportioning of the costs taxed. In this respect, I do not find reason to set aside the taxation of the two bills. I instead, order that the taxed bill be remitted back to the taxing master, for apportionment of specific sums to each of the Respondents herein.

18. In conclusion, the Court orders: -

- i. That time within which to submit a reference of the decision of the taxing master rendered on October 14, 2022, be and is hereby enlarged to the date of filing hereof, and this application is deemed a reference of the said decision, duly filed within the time so enlarged.
- ii. That the taxed bills be remitted back to the taxing master for apportionment of specific sums to each of the Respondents herein.
- iii. The execution of the certificate of costs is stayed until the costs thereon are apportioned between the 1st, 2nd 3rd and 4th Respondents herein.

19. Orders accordingly.



SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 16TH DAY OF MARCH, 2023.

CHRISTINE N BAARI

JUDGE

Appearance:

Ms Nyakwani h/b for Mr Mwamu for the Claimant

N/A for the 1st Respondent/Applicant

N/A for the 2nd, 3rd, 4th & 5th Respondents.

Christine Omolo – C/

