



**Murila v Langat & another (Cause 1153 of 2014)
[2023] KEELRC 988 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELRC 988 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1153 OF 2014
AN MWAURE, J
APRIL 20, 2023**

BETWEEN

SUSAN MURILA CLAIMANT

AND

RICHARD LANGAT 1ST RESPONDENT

BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY

FUND 2ND RESPONDENT

RULING

1. The applicant herein prays vide chamber summons application dated the May 12, 2022 for the following:
 1. That this honourable court be pleased to enlarge the time within which the applicant can institute the proceedings herein.
 2. That the ruling of the taxing master delivered on January 26, 2022 and subsequent ruling delivered on February 17, 2022 in so far as the same relates to the reasoning and determination pertaining to the applicant's party bill of costs dated August 16, 2021 be set aside.
 3. That the honourable court be pleased to re-tax the costs due to the applicant relating to the instruction fees and getting up fees in the applicant's bill of costs dated August 16, 2021 afresh.
 4. That in the alternative and without prejudice to the foregoing, this honourable court be pleased to refer the matter back for re-taxation of the applicant's bill of costs dated August 16, 2021 with proper and appropriate directions thereon.



5. That the cost of this application be awarded to the applicant.
2. The applicant avers the bill of costs filed on August 16, 2021 was for Kshs 4,129,411/90 as legal fees for professional services rendered in suit Nairobi ELRC No 1153 of 2014.
3. He says the taxing master erred in taxing the costs and failed to consider the interests of the parties, the importance and complexity of the matter and conduct of proceedings among others.
4. The applicant says the awarded instructions fees and getting up fees were disproportionate and low and so prays for the above orders prayed herein.
5. Dr Fred N. Ojiambo Mbs SC deponed an affidavit dated May 12, 2022 and avers his affidavit is in support of application seeking to set aside the decisions of the taxing master. The ruling seeking legal fees of Kshs 4,129,411 in ELRC 1153 of 2014 was delivered on January 26, 2022.
6. He says he appealed the ruling being granted kshs 236,954/- and his appeal was filed on February 3, 2022 and on February 17, 2022 the ruling was amended and Kshs 306,929/- was awarded.
7. He says he contested the second ruling on March 2, 2022 and requested for reasons of the said ruling and taxing master by her letter dated April 20, 2022 and responded that the reasons are contained in the rulings dated January 26, 2022 and February 17, 2022.
8. He says the taxing master erred in both law and facts by failing to exercise the powers and discretion granted to her under the remuneration order and so pray the application be allowed.
9. The respondent filed grounds of opposition and stated that the application is defective and is incompetent. He avers the applicant did not demonstrate sufficient grounds to impugn exercise of judicial decision by the taxing master.
10. Ondari J advocate in his replying affidavit avers that he taxing master ruling delivered on January 26, 2022 upheld the fact that orders granted were discretionary in nature. He says that the taxing master depended on *Joreth Limited v Kiriano & Associates* [2002]. He says Hon. Mutai noted that the issues raised were not novel in nature and documents were not bulky and hence the basis of her ruling.
11. He submits the claimant in ELRC 1153 of 2014 did not pray for any specific amount. He submits that as per the submission by the court in the case of *Joreth Ltd v Kigano & Associates* (*supra*) a taxing officer considers
 - i. issues for determination
 - ii. documentation lodged are they bulky
 - iii. The value of the subject matter cannot be deciphered from the judgment.
12. Further the respondent says the applicant filed the application almost three months after the ruling by the taxing master and did not give convincing reason to pray for enlargement of time.
13. He submits that the taxing master gave comprehensive reasoning in her rulings and so he concludes the application is an abuse of the court process. He says that there comes a time when litigations must come to an end and so this application seems to seek to prolong time. He prays the application be dismissed with costs.



Applicant's submissions

14. The applicant tackles two main issues one being whether the application is time barred and secondly whether the taxing master exercised her discretion properly in taxing the bill of cost at Kshs 306,929/-.
15. The applicant avers that once the ruling was delivered on February 26, 2022 they wrote to the taxing master on March 3, 2022 (14 days as provided in advocate's remuneration order). He says the time between the Deputy Registrar's response on April 20, 2022 and the filing of this response on May 12, 2022 is about 8 days later. He says the delay is not unreasonable considering April 29, 2022 was a gazetted holiday for the funeral of the retired president Mwai Kibaki. And Labour Day was on a Sunday and so Monday was a public holiday as well.
16. He is relying on the Court of Appeal decision *Paul Wanjobi Mathenge v Duncan Gichane Mathenge* [2013] eKLR as cited in the *County Government of Tana River v Miller & Company Advocates* [2021] eKLR where court held as follows:-

“it is now well settled decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled in general matters which this court takes into account in deciding whether to grant an extension of time are: first, length of delay, secondly, the reason for delay and thirdly the chances of appeal succeeding.....”
17. He therefore invites the Court to exercise its discretion to enlarge time.
18. The applicant as well avers that the taxing master's ruling was rather general and is loosely structured and so does not capture the relevant factors provided under paragraph 11 of *Advocates Remuneration Order*. The applicant relied on the cases of *Republic vs Ministry of Agriculture & 2 others ex parte Muchiri W. Njuguna & 6 others* eKLR where Court held

“that in taxing a bill it is necessary to ascertain how she arrived at that figure..”
19. He also relied on the case of *Kamu National Elections Board & 2 others v Selah Yakub Farah* [2018] eKLR which dissected the case of *Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & another* [1972] E.A which set out the principles to be followed in taxation of costs inter alia. The instruction fee should cover advocates costs including taking instructions and preparing the case for trial and taxing master must tax each bill on its merits. Also value of subject matter had to be taken into account and also taxing master's discretion was to be exercised judicially and not whimsically or capriciously.
20. The applicant says the case was in court for four years and applicant expended time in advancing the case. She said she expended a lot of time in representing the case.
21. The applicant avers that the taxing master erred in her ruling and failed to appreciate the time and effort expended in the hearing of the case for four years. The applicant prays that the ruling of the taxed bill of costs be set aside and the same be re-taxed.
22. The submissions by the respondent were not traced in the court file.

Analysis

23. The applicant's prays inter alia for enlargement of time within which applicant can institute the proceedings. He also prays for the ruling made by the taxing master delivered on January 26, 2022 and subsequent ruling delivered on February 17, 2022 be set aside.



24. The applicant had sought a sum of kshs 4,129,411/- as legal fees and she was finally awarded at kshs 306,929. The court is guided by the various authorities related to taxing of the bill of costs. The case of Republic v Ministry of Agriculture and 2 others ex parte Muchiri W. Njuguna & 6 others [2006] is one of them where court held:- “ it is necessary to ascertain how he arrived at that figure for although the judicial review applicant’s form position is that it was an exercise of lawful discretion which therefore this court should uphold, the... perception of discretion donated by law, I believe is that such a discretion is only exercised when it is guided by transparent, reliable and just criteria.
25. The court has reviewed the ruling given by the taxing master dated January 26, 2022 and agrees with the applicant that the taxing master did not give reason as to how she arrived at the award save to refer to the case of Joreth Limited v Kigano and Associates [2002] EA 92. And at the same time the court is aware that the applicant has not claimed any specific figure and so the taxation was largely at the discretion of the taxing master and she therefore used her discretion fairly. There were no figures to base her taxation on. In that case the court does not agree that the taxing master made her taxation based on wrong principles of law and that she was unreasonable and unjust.
26. The issue of the application having been filed out of time has been considered by the court and the court can confidentially say the applicant filed the appeal without undue delay. He wrote to the court requesting for the reasons that determined the award given and the court responded by a letter dated April 20, 2022 and informed the applicant the reason in the award were contained in the rulings dated 26/1/2022 and 17/2/2022. He then filed this reference by May 12, 2022. Considering the reasons given for the delay by the applicant including the days of public holidays in that season the court finds it prudent to exercise its discretion and give the applicant leave for the enlargement of time to file the reference after the expiry of the period for the said appeal.
27. Considering the following the court will grant the applicant the prayers for enlargement of time and to deem the reference as duly filed.
28. At the same time the court has already observed that the taxing master did not base her taxation on wrong principles of law and she was not unreasonable and unjust but was merely exercising her discretion.
29. Having said so the court is conscious of the difference between what the applicant had taxed for herself and what was taxed by the taxing master. The variance is so enormous that it is better to give the respective parties the benefit of doubt and re-consider the bill. To quote the words of Lord Chief justice Howard “Justice should not only be done but should also be seen to be done and that is what the court is aiming to cure in this matter.”
30. In view of the foregoing the court will allow the application dated May 12, 2022 and enlarge time to file the same and also find the reference in court as duly filed. The matter is then referred to a different taxing master within the next 45 days from today’s date for re-taxing.
31. Costs will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH DAY OF APRIL, 2023.

ANNA NGIBUINI MWAURE

JUDGE

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.

ANNA NGIBUINI MWAURE

JUDGE

