



**Orot v Chairman, Board of Directors, Lake Victoria South Water Services Board & another (Cause 30 of 2016) [2023] KEELRC 1537 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1537 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 30 OF 2016  
S RADIDO, J  
JUNE 21, 2023**

**BETWEEN**

**ENG MOSES AGUMBA OROT ..... CLAIMANT**

**AND**

**CHAIRMAN, BOARD OF DIRECTORS, LAKE VICTORIA SOUTH WATER SERVICES BOARD ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF WATER AND IRRIGATION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In a judgment delivered on 15 December 2021, the Court dismissed the Cause with costs to the Respondents.
2. The 1<sup>st</sup> Respondent then caused its Bill of Costs to be taxed on 20 April 2023.
3. The 1<sup>st</sup> Respondent was not satisfied and it wrote to the Taxing Officer on 28 April 2023, seeking for the reasons for the taxation.
4. The Taxing Officer responded on the same day, and the 1<sup>st</sup> Respondent filed a Reference on 10 May 2023, contesting the taxation of items numbers 1, 2, 4, 5, 6, 12, 24, 40, 76 and 86 of the Bill of Costs.
5. The grounds in support of the Reference were that the Taxing Officer had made an arithmetical error in adding up the aggregate sum taxed; no reason was assigned for awarding Kshs 120,000/- as instructions fees nor appreciation made to the fact that the value of the subject dispute as pleaded was Kshs 6,731,200/-; the award of getting up fee was, therefore, erroneous and that there was wrong identification of folios perused and in the Statement of Response.
6. The 1<sup>st</sup> Respondent filed his submissions on 14 June 2023, and the Claimant's submissions were not on record by this morning.



7. The Court has considered the Reference, affidavit in support and the submissions.
8. In considering the Reference, the Court is alive to the legal principles which govern such applications: demonstration of error of principle or that the award was manifestly excessive as to draw an inference it was based on error of principle (see *First American Bank of Kenya v Shah & Ors* (2002) EALR 64.

### **Instruction fees**

9. In the Ruling, the subject of the Reference, the Taxing Officer rendered herself on item 1 (instruction fees):  
Item No. 1 on instruction fees is charged in the sum of Kshs 120,000/-, I have taxed off the sum of Kshs 189,624/-.
10. Under Schedule 6 of the *Advocates (Remuneration)(Amendment) Order, 2014*, some of the factors the Taxing Officer should consider include the value of the subject matter, nature and importance of the matter, general conduct of the proceedings and/or novelty or complexity of the dispute.
11. The Taxing Officer did not give any reasons why the sum of Kshs 189,624/- was taxed off. Equally not disclosed were the factors which were considered in awarding Kshs 120,000/-.
12. Taxing Officers should always endeavour to state in their Rulings the factors considered in taxing-off bills of costs as demanded by the *Advocates (Remuneration)(Amendment) Order, 2014*, otherwise it would be impossible to ascertain whether the taxation jurisdiction was exercised judiciously.
13. Without a disclosure of the reasons or factors considered, the Court finds that the Taxing Officer fell into an error of principle.

### **Getting up fees**

14. Getting up fees is contingent on the instructions fees allowed. The Taxing Officer herein fell in error of principle in not disclosing the factors considered in taxing the instructions fees and consequently, the getting up fees allowed cannot be sustained.

### **Perusals/drawings**

15. Items 3, 4, 5, 6, 12, 24, 40, 76 and 86 of the Bill of Costs concerned either perusals or drawings and taxation should have been based on the folios.
16. The 1<sup>st</sup> Respondent asserted that the Taxing Officer did not count the folios correctly and thus erred in the awards allowed.
17. The Claimant did not file an affidavit to controvert the 1<sup>st</sup> Respondent's assertions that the Taxing Officer did not count the folios correctly and the Court, therefore will allow this ground of the Reference as well.
18. The Court is, therefore, of the view that the Reference has merit.

### **Conclusion and Orders**

19. The Reference succeeds, and the Court orders that:
  - i. The Taxation Ruling dated 20 April 2023 is hereby set aside.
  - ii. The 1<sup>st</sup> Respondent's Bill of Costs to be placed the Taxing Officer for fresh taxation.



20. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 21<sup>ST</sup> DAY OF JUNE 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Omondi, Abande & Co. Advocates

For 1<sup>st</sup> Respondent Owiti, Otieno & Ragot Advocates

For 2<sup>nd</sup> Respondent Office of the Honourable Attorney General

Court Assistant Chrispo

