



**Onyango v Tribe Hotel Limited (Miscellaneous Reference Application
E195 of 2022) [2023] KEELRC 1400 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1400 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS REFERENCE APPLICATION E195 OF 2022**

BOM MANANI, J

JUNE 8, 2023

BETWEEN

JOSPHAT COSMAS ONYANGO APPLICANT

AND

TRIBE HOTEL LIMITED RESPONDENT

RULING

1. Through this application, the Applicant has filed an objection to the decision of the Taxing Master delivered on November 9, 2022 by which the Respondent's Bill of Costs arising from Court of Appeal case No. 282 of 2017 was taxed at Ksh. 400,000.00. It is the Applicant's contention that the Taxing Master committed an error of principle that warrants the setting aside of the impugned taxation to enable a re-taxation of the Bill either by this court or another Taxing Master.
2. The Respondent is opposed to the application. The Respondent has filed an objection to the jurisdiction of the court to adjudicate on the Reference through a Notice of Preliminary Objection dated January 13, 2023. The objection raised the following grounds:-
 - a. That the decision being challenged emanates from the Court of Appeal and in the circumstances this court has no jurisdiction to hear and determine the application.
 - b. That this court is functus officio in respect of matters being raised herein. The issues were handled at the Court of Appeal and no issue therein was remitted back to this court for determination.
 - c. That in view of the above the application is fatally defective and incompetent.



Analysis

3. I will address the first objection as it is sufficient to dispose of the matter. In the objection, the Respondent contends that the decision being challenged emanates from a Court of Appeal decision. That being the case, this court has no jurisdiction to hear and determine the application.
4. This ground raises a point of law relating to the presence or absence of jurisdiction by this court to entertain a Reference arising from an order for Party and Party costs issued by the Court of Appeal. In my view, it fits in the bill of what constitutes a preliminary objection as discussed in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969]EA.
5. There is no contest on whether the taxation before the Taxing Officer that resulted in the reference arose from the Court of Appeal order for costs in *Tribe Hotel Ltd v Josphat Cosmas Onyango* [2018] eKLR. In this context, it cannot be said that the facts informing the dispute as contested.
6. The procedure for taxation and challenging a Taxing Master's order arising from a Court of Appeal order on costs is governed by rules 111 and 112 of the *Court of Appeal Rules*, 2010. The two rules provide as follows:-

Taxation

- a. The Registrar shall be a taxing officer with power to tax the costs arising out [of] any application or appeal to the Court as between party and party.
- b. Such costs shall be taxed in accordance with the rules and scale set out in the Third Schedule.
- c. The remuneration of an advocate by his clients in respect of application or appeal shall be governed by the rules and scales to proceedings in the High Court.

Reference on taxation

- a. Any person who is dissatisfied with a decision of the Registrar in his capacity as taxing officer may require any matter of law or principle to be referred to a judge for his decision and the judge shall determine the matter as the justice of the case may require;.....
 - b. Any person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a judge and the judge shall have power to make such deduction or addition as will render the bill reasonable and except as in this sub-rule provided, there shall be no reference on a question of quantum only.
 - c. An application for a reference may be made to the Registrar informally at the time of taxation or by writing within seven days thereafter.
 - d. A reference to a judge may be adjourned by him for the consideration of the Court.
 - e. Any person dissatisfied by the decision of a judge given under sub-rule (1) or sub- rule (2) may apply to the Court to vary, discharge or reverse the same and such application, may be made either informally to the judge at the time of the decision or by writing to the Registrar within seven days of the time.
7. On the other hand rule 2 of the aforesaid rules define the terms 'Registrar', 'Judge' and 'Court' as follows:-

“Registrar” means the Registrar of the Court and includes a deputy registrar thereof;



"Judge" means a judge of the Court acting as such;

"Court" means the Court of Appeal and includes a division thereof and a single judge exercising any power vested in him sitting alone.

8. From the foregoing, it appears to me that where the Court of Appeal has issued an order for costs, the Registrar of that court is the one mandated by the rules to ascertain the quantum of those costs. Where a litigant is aggrieved by the Registrar's decision on party and party costs, the course open to him is to have the grievance placed before a single Judge of the Court of Appeal for determination. The Judge has the discretion to either determine the dispute or refer the matter to a full bench of the court. Where a single Judge renders a decision on the objection to the taxation, either party may apply to have the decision of the single Judge reviewed by the full bench. As regards Advocate-Client costs, these are to be determined in accordance with the rules applicable to the High Court.
9. Therefore, adjudication of Advocate-Client Bills of Costs and objections from such taxations in respect of proceedings that have been before the Court of Appeal are governed by the provisions of the Advocates (Remuneration) Order 1962. On the other hand, taxations of party and party costs from such proceedings and resolution of objections arising there-from are governed by the [Court of Appeal Rules](#) 2010.
10. The decision that has given rise to the reference before me relates to an order by the Registrar of the Court of Appeal to ascertain the quantum of Party and Party costs granted to the Respondent by the Court of Appeal. Under rule 112 of the [Court of Appeal Rules](#), 2010, an objection to the decision ought to have been placed before a single Judge of the Court of Appeal for adjudication. Consequently, this court is not seized of jurisdiction to entertain the objection.

Determination

11. The upshot is that this court lacks jurisdiction to preside over the current proceedings. Accordingly, the reference is struck out with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 8TH DAY OF JUNE, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

