



**Maranga & another v Express Kenya Limited (Employment and Labour Relations Cause 227 of 2015) [2023] KEELRC 2184 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2184 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 227 OF 2015  
MA ONYANGO, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**SIMON M MARANGA ..... 1<sup>ST</sup> CLAIMANT**

**JASPER KIMWELL ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**EXPRESS KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The Claimants herein filed an application vide Chamber Summons dated November 5, 2021 seeking orders that;
  - i. The decision of the taxing officer delivered on October 22, 2021 in respect to the Bill of costs dated September 25, 2020 be set aside entirely.
  - ii. The bill be tabled before a different taxing officer for re-taxation
  - iii. The costs of this application be provided for.
2. The grounds in support of the application are that the Taxing Master erred in law and in principle by using Schedule 6 of the 2006 Advocates Remuneration Order for the taxation of the bill of costs; that the Taxing Master erred in the course of taxing the bill dated September 25, 2020 by awarding the Claimant an inordinately low quantum without due consideration of the amount prayed for in the Memorandum of Claim by each Claimant thus causing injustice to the parties; that the Taxing Master erred in principle for failing to consider the difficulty and complexity of the issues brought before the court and the evidence adduced, both of which justify the costs prayed for in the bill of costs; that the Taxing Master erred in principle by failing to consider the length of time the trial took, the matter having commenced in 2004 and concluded in 2020.



3. The application is supported by an affidavit sworn on November 5, 2021 by the 1<sup>st</sup> Claimant. He reiterated the contents of the grounds upon which the application is premised.
4. It appears that the Respondent did not file a response to this application as there is no replying affidavit or grounds of objection on record.
5. The application was canvassed by way of written submissions. The Respondent filed its submissions dated June 13, 2022 while the Claimants' submissions were dated September 19, 2022.
6. The only issue before the Court for determination is whether the applicants are entitled to the orders sought.
7. The main bone of contention in this application is the quantum awarded on instructions fees. The Claimants aver that the Taxing Master erred by determining the subject value of the matter based on the judgment amount instead of the pleadings.
8. The Court of Appeal dealt with a similar issue in the case of *Peter Muthoka & another v Ochieng & 3 others [2019] eKLR* and observed;

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.”
9. This issue having been determined by a court whose decision is binding on this court I need not reinvent the wheel. As decided in the above case a party is not entitled to fees based on what is claimed but rather, what the Claimant is entitled to based on the court's decision.
10. From the foregoing, it follows that the matter having been determined by the court as rendered in the judgment, it is only logical that the Instruction fees is based on the Judgment and not pleadings as submitted by the Claimants.
11. The application is accordingly without merit and is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**MAUREEN ONYANGO**

**JUDGE**

