



Nakhayo v Council, University of Kabianga & another (Petition E006 of 2020) [2023] KEELRC 2734 (KLR) (18 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2734 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E006 OF 2020**

S RADIDO, J

OCTOBER 18, 2023

**IN THE MATTER OF ENFORCEMENT OF THE FUNDAMENTAL RIGHTS
AND FREEDOMS AND CONSTITUTIONAL VALUES AND PRINCIPLES**

AND

**IN THE MATTER OF ARTICLES 1, 2, 10, 21, 22, 27, 28, 41, 47,
50(1), 54, 232 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTIONS 11, 12(2) AND 15 OF THE PERSONS WITH DISABILITIES
ACT, 2003, SECTION 5 OF THE EMPLOYMENT ACT, SECTION 4 OF THE FAIR
ADMINISTRATIVE ACTION ACT AND OTHER ENABLING PROVISIONS OF THE LAW**

BETWEEN

GODFREY ODEVERO NAKHAYO PETITIONER

AND

COUNCIL, UNIVERSITY OF KABIANGA 1ST RESPONDENT

VICE-CHANCELLOR, UNIVERSITY OF KABIANGA 2ND RESPONDENT

RULING

1. In a ruling delivered on 2 August 2023, the Taxing Officer taxed the Petitioner's Bill of Costs in the sum of Kshs 266,376/-.
2. The Respondent felt aggrieved and it filed a Reference on 23 August 2023, seeking orders:
 - (1) ...
 - (2) ...



- (3) That the taxation of the Petitioner's party and party costs as carried out by Hon B. Omollo, Deputy Registrar of the Employment and Labour Relations Court based on the Ruling delivered on the 2nd day of August 2023 be set aside.
- (4) That the Petitioner's party and party bill of costs be remitted for taxation with directions that no order as to costs was made on the Petition by the Judge hence all items relating to costs being items 1 -32 and items 50 -55 be taxed off.
- (5) That the taxation of the bill be restricted to items arising from the application dated 23rd April 2021 in terms of items 33 – 48 and items 56 – 58.
- (6) That the Petitioner be denied costs of the taxation as more than 1/6th of the bill has been taxed off.
- (7) That the time for filing a Reference be extended and the filed Reference be filed.
- (8) That the costs of the Reference be awarded to the Respondents to be sourced by the Petitioner.

3. The grounds in support of the application were that the Vice-Chancellor was away from the office and could not sign an affidavit in support of the Reference earlier; the Court had ordered each party to bear own costs of the Petition; the Court only granted the Petitioner's costs in respect to an application for stay of execution pending appeal; the Taxing Officer did not consider the prescribed rates while taxing items 40 to 48 and 59, and that the Taxing Officer erred in law and fact by taxing off the Bill of Costs on the Petition without an order of the Court.
4. The Petitioner's advocate filed a replying affidavit in opposition to the application on 15 September 2023.
5. In the affidavit it was averred that the grant of leave or extension of time was not a right but a discretion; the Respondents were aware of the date of Ruling on the taxation but failed to attend Court thus there was inordinate delay and that the Respondents had failed to approach the Court as contemplated by paragraph 11(a) and (b) of the Advocates Remuneration Order.
6. The Respondents filed submissions on 22 September 2023 and the Petitioner on 5 October 2023.
7. The Court has considered the application, affidavits, and submissions.

Extension of time

8. The Respondents explained the failure to file a Reference within the prescribed time by asserting that the Vice-Chancellor was out of office to swear the affidavit in support of the Reference.
9. The Petitioner did not challenge the explanation and the Court will extend the time for filing the Reference up to the date of filing the application.

Notice of Objection

10. The Petitioner took the view that the Reference was a non-starter because the Respondents had not lodged the Objection envisaged by paragraph 11(1) of the Advocates Remuneration Order.
11. The Court has perused through the record. The Respondents did not file the Objection contemplated under the aforesaid Order.



12. In that respect the instant Reference is irregular.
13. However, in the judgment delivered on 17 February 2021, the Court directed each party to bear own costs of the Petition.
14. The taxation of the party-to-party bill of costs as related to events and processes up to the date of judgment therefore lacked both a factual and legal foundation.
15. The Taxing Officer, in the circumstances fell into an error of both fact and jurisdictional law in allowing or taxing for services related to and leading to the delivery of the judgment, when costs had not been awarded. The Taxing Officer had no jurisdiction to tax costs not awarded.
16. The error was such that the Court is of the view that the taxation was void ab initio and must be set aside.

Conclusion and Orders

17. In light of the foregoing, the Court orders:
 - i. The taxation of 2 August 2023 is set aside.
 - ii. The Petitioner has the liberty to tax the bill in respect of the costs awarded on 2 December 2021.
18. Each party to bear its own costs, considering the Petitioner had lodged a bill for costs not awarded.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 18TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

