



REPUBLIC OF KENYA



KENYA LAW
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**Opondo v Teachers Service Commission & another (Cause 240 of 2014)
[2023] KEELRC 2878 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2878 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 240 OF 2014
S RADIDO, J
NOVEMBER 15, 2023**

BETWEEN

JACKSON AUKO OPONDO CLAIMANT

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

KENYA COMMERCIAL BANK LTD 2ND RESPONDENT

RULING

1. The Taxing Officer taxed the Claimant's bill of costs on 2 August 2023 at Kshs 172,830/-.
2. On 9 August 2023, the 2nd Respondent wrote to the Taxing Officer requesting for reasons for the taxation, and on 29 August 2023, the 2nd Respondent took out a Chamber Summons seeking orders:
 - i. ...
 - ii. ...
 - iii. ...
 - iv. That this Honourable Court be pleased to review, vary or set aside the Ruling of the Taxing officer delivered on 2 August 2023 particularly in items 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, 34, 36, 38, 39, 40, 41, 42, 43, 44, 45 and 46 of the Claimant's Bill of Costs dated 14th March 2023 or in the alternative the Claimant's Bill of Costs dated 14th March 2023 be remitted back for taxation before the same or another Taxing Officer with appropriate directions on the question of assessment.
 - v. That the costs of the Reference be awarded to the applicant.
3. The grounds in support of the application were that since the Claimant had been awarded general damages of Kshs 100,000/-, the taxation should have been on the basis of Schedule 7 of the *Advocates*



Remuneration Order and not Schedule 6 thereof as read with Rule 58 of the Advocates Remuneration Order, 2014 and that Rule 58 was couched in mandatory terms.

4. The Claimant opposed the application through a replying affidavit filed on 6 September 2023, on the primary ground that before the Gazette Notice No. 6024 of 22 June 2018 was issued, Subordinate Courts did not have jurisdiction over employment disputes.
5. The 2nd Respondent filed its submissions on 13 October 2023 and the Claimant on 17 October 2023.
6. In its submissions, the 2nd Respondent urged the Court to adopt the holding in Joseph Mumali Wanga v Blessed TC World Class Spares Ltd (2021) eKLR, that where the amount awarded could have been made by the Subordinate Court, the applicable scale for determining costs is the one applicable before the Subordinate Courts.
7. The Claimant on the other hand submitted that Rule 58 of the Advocates Remuneration Order was not mandatory and that it could not override the discretion given to the Taxing Officer and the Court's attention was drawn to Kipkorir Tito & Kirwa Advocates v Deposit Protection Fund (2005) eKLR and American Bank of Kenya v Stal & Ors (2002) EA 64.
8. The Court has given due consideration to the Summons, affidavits and submissions.
9. When the Cause was filed in 2014, Subordinate Courts did not have jurisdiction over employment disputes. The jurisdiction was only extended through the Gazette Notice of 22 June 2018.
10. Section 29 of the Employment and Labour Relations Court Act empowers the Court to award costs guided by the Advocates (Remuneration) Order.
11. The Cause was heard and determined at a point in time when the Subordinate Court had delegated jurisdiction.
12. The Court had the option to transfer the Cause to the Subordinate Court but it did not. The 2nd Respondent did not request the transfer of the Cause to the Subordinate Court.
13. Further, the Respondent could have requested the Court before judgment to make an order in terms envisaged by Rule 58 of the Advocates Remuneration Order but it did not.
14. The Court, therefore, sees no wrong exercise of discretion or legal fault in the Taxing Officer using Schedule 6 of the Order in taxing the bill of costs.

Conclusion and Orders

15. The 2nd Respondent's application is dismissed with costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISII ON THIS 15TH DAY OF NOVEMBER 2023.

RADIDO STEPHEN

JUDGE

Appearances

For Claimant Aluoch Odera & Nyauke Advocates

For 1st Respondent Faith Kaluai, Legal Officer

For 2nd Respondent Mr Ragot instructed by Owiti, Otieno & Ragot Advocates

