



**Universities Academic Staff v Kirinyaga University (Cause 2 of 2022)  
[2023] KEELRC 2747 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2747 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE 2 OF 2022  
ON MAKAU, J  
NOVEMBER 3, 2023**

**BETWEEN**

**UNIVERSITIES ACADEMIC STAFF ..... APPLICANT**

**AND**

**KIRINYAGA UNIVERSITY ..... RESPONDENT**

**RULING**

1. This ruling relates to the respondent's Notice of Preliminary Objection dated October 25, 2023 which seeks to have the claimant's Chamber Summons dated October 12, 2023 dismissed on grounds that the jurisdiction of the court has not been properly invoked as provided under rule 11 of the *Advocates Remuneration Order* (ARO).
2. Mr. Kamotho, learned counsel for the respondent urged the objection contending that the jurisdiction of this court can only be invoked by way of a Reference under rule 11 of the *ARO*. He observed that there is no reference filed for the court to exercise appellate jurisdiction over the decision of the taxing master. Further, that the court lacks jurisdiction even to grant the order of stay sought and therefore the Chamber Summons should be struck out with costs.
3. M/s. Nyakundi learned counsel opposed the preliminary objection on behalf of the claimant. From the onset she conceded that the impugned Chamber Summons is not a reference against the decision of the taxing master but an application for stay of execution of the ruling by the Taxing Master delivered on May 17, 2023. She submitted that the claimant filed Notice of Objection to the said decision on the same day it was delivered and requested to be furnished with reasons.
4. She contended that the taxing officer has not yet furnished the claimant with the reasons and the respondent has commenced execution to recover the taxed costs. She contended that the said execution is unlawful and a violation of the claimant's rights.



5. In his rejoinder, Mr. Kamotho submitted that the Chamber Summons is asking for the court to vacate the orders issued by the taxing master by way of reference. He submitted that the application is defective and the court's jurisdiction has not been properly invoked.
6. I have considered the Chamber Summons, the objection and the rival submissions. It is common ground that the taxing master taxed the respondent's Party and Party Bill of Costs and rendered a ruling on May 17, 2023 whereby she awarded the respondent Kes 3,796,159. There is no denial that the claimant objected to the award *vide* a notice filed on May 18, 2023. The issue for determination is whether the court has jurisdiction to entertain the Chamber Summons dated October 12, 2023.

### **Analysis**

7. The Chamber Summons is brought under Rule 7 and 11 of the ARO 2014, Order 22 Rule 52 of the Civil Procedure Rules 2010 and Section 1, 1A, 3A and 3B of the [Civil Procedure Act](#). It seeks the following orders:
  1. That this honourable court do issue an order of stay of execution of the taxation ruling by the taxing master honourable mercylene Lubia dated May 17, 2023 for payment of Kenya Shillings Three Million, Seven Hundred and Ninety-Six Thousand, One Hundred and Fifty-Nine (Kes 3,796,159/=) pending the hearing and determination of this application.
  2. That the decision of the honourable taxing master delivered on May 17, 2023 be set aside and/or quashed and vacated by way of reference and all the consequential orders be and are hereby set aside.
  3. That in the alternative to prayer 2 above, the honourable Court do exercise its inherent jurisdiction and be pleased to re-tax the respondent's Party-Party Bill of Costs dated March 6, 2023.
  4. That in the alternative to prayer 2 and 3 above, the Honourable Court exercise its inherent jurisdiction and refer the Bill of Costs dated March 6, 2023 to another taxing officer for re-taxation or make directions to a fresh taxation.
  5. That costs of this application be provided for.
8. The above orders can be collapsed into two: prayer for stay of execution pending determination of the summons; and prayer for setting aside or quashing of the decision by the taxing master, and then tax the bill or refer it for re-taxation by another taxing officer. Consequently, by all means the application is a reference against the decision of the taxing master.
9. However, the applicant denied that it is a reference and clarified that it is still waiting to be furnished with the reasons to enable it file a reference under rule 11 of the [ARO](#). This leaves us with the prayer for stay of execution of the taxed costs.
10. The stay order was sought on interim basis, pending the hearing and determination of the Summons. Since the applicant's counsel has admitted that there is no reference but rather an application for stay of execution, I am satisfied that the application is now otiose.
11. The Chamber Summons dated October 12, 2023 is a mongrel of proceedings which as submitted by the respondent, has not properly invoked this court's jurisdiction. Therefore I allow the objection by the respondent and strike out the Summons with costs.
12. As a parting shot, the court notes that the claimant objected to the decision of the Taxing Master and sought reasons under rule 11 of the [ARO](#) but the same was not provided. The claimant has a right to



challenge the decision by the taxing officer under rule 11 of the [ARO](#). It is clear from the record that the taxing master never rendered a typed ruling. Consequently, I direct that the ruling of the taxing master be typed, certified and supplied to the claimant within 14 days of today. Since the ruling has the reasons for the taxed costs, the claimant will have the right to exercise its rights under rule 11 of the [ARO](#) and seek stay of execution. In the meanwhile, I order *status quo*, to be maintained for 14 days to enable the claimant to obtain the typed copy of the said ruling.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OF NOVEMBER 2023.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

**ONESMUS N MAKAU**

**JUDGE**

