



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 16 OF 2013**

**(FORMERLY KISUMU HCCC NO. 43 OF 2003)**

**JOHN OSEWE OGOLA AND 46 OTHERS.....APPLICANTS**

**VERSUS**

**RAGHBIR SINGH SADHU T/A HOTEL ROTALE.....RESPONDENT**

**RULING**

1. This ruling relates to a Chamber Summons Application dated 23<sup>rd</sup> September, 2021 and filed in court on even date. The Applicants seek the following orders: -

**i. Spent**

**ii. That there be a stay of any further proceedings herein**

**iii. That the decision of the taxing officer delivered on the 9<sup>th</sup> September, 2021 on the Claimant's Bill of Costs dated 2<sup>nd</sup> June, 2016 the quantum awarded thereon and the reasoning with respect to the said award be set aside.**

**iv. That the court be pleased to order investigations as to how proceedings and parts of the file went missing before taxation.**

**v. In the alternative to prayer (4) the Honourable court be pleased to remit the Bill of Costs dated 2<sup>nd</sup> June, 2016 for re-taxation before a different taxing officer with appropriate directions thereof.**

**vi. Costs of the application be in the cause.**

2. The application is premised on the grounds on the face thereof and an affidavit sworn by one William Odongo Matoro.

3. The basis of the application is that the bill as taxed is manifestly low as compared to the work done. The Applicants contend that the taxing master departed from the law as instruction fees are usually taxed under the prevailing scale at the time of the Judgment.

4. The Applicants have also laid allegations of missing parts of the court file which in their view, informed the low bill of costs per the taxation.

5. The items in issue in the bill of costs are Numbered 441, 442, 488,490,493,497, 498, 499 and 500.

6. The Reference is opposed vide a Replying Affidavit dated 4<sup>th</sup> October, 2021, sworn by Balbir Singh Sandhu. The Respondent asserts that the Bill of Costs as taxed is within the law as there was no way a judgment of Kshs. 3,939,882.00 could have instructions that were not in the court file.

7. The Respondent further avers that it is unreasonable of the Applicants to expect the taxing master to have taxed on a figure of Kshs. 15,000,000.00 that is not in the judgment.

8. The Respondent further states that the earlier taxation was erroneous and which forced him to file a refence before court resulting in the taxation subject of this ruling.

9. The Respondent avers that he has paid more than the decretal sum and intends to apply for a refund and this application is an attempt at preventing him from seeking a refund.

10. The Applicants filed submissions in the matter.

#### **Determination**

11. I have considered the application, supporting affidavit, the Replying affidavit in opposition and the submissions of the Applicants. The issue for determination is whether there is justification for a third taxation of the Bill of Costs in this matter.

12. The basis of the application is that parts of the court file were missing as at the time of taxation.

13. The Respondent's case is that the Applicants' Bill of Costs is premised on a Kshs. 15,000,000 claim out of which, the court only awarded Kshs.3,939,882.00.

14. The Bill of Costs dated 2<sup>nd</sup> June, 2016, indicates the amount claimed in instructions fees as Kshs.5,000,000 premised on the claim being for Kshs. 15,00,000.00. The Court in its judgment made an award of Kshs.3,939,882.00.

15. The court in a ruling delivered on 27<sup>th</sup> November, 2020, set aside the ruling of the Deputy Registrar that taxed instruction fees in this matter at Kshs.3,600,000.00. The basis of the finding being that taxiing instruction fees at Kshs.3,600,000.00 for a judgment of Kshs.3,939,882.00 was neither reasonable, fair nor just.

16. It is now trite law that the High Court (read Employment and Labour Relations Court) will only interfere with the decision of a Taxing Master in cases where there has been shown to be an error in principle. *In Republic –Vs- Ministry Of Agriculture & 20 Others Ex-Parte Muchiri W' Njuguna [2006]eKLR, Hon. Justice J. B. Ojwang (Retired)* stated as follows:-

***“The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.”***

17. The Taxing Master in her ruling dated 9<sup>th</sup> September, 2021, gave reasons for taxing of the items subject of this application; which is that they were not supported by the court record. The Applicants have not adduced evidence to show that the items were supported, other than by stating the same.

18. There is no proof that the Taxing Master committed an error in principle to the Bill of Costs subject of this ruling and therefore the items 441, 442, 488,490,493,497, 498, 499 and 500 that were taxed of being reinstated.

19. On the issue of missing parts of the court file, there is no proof that there are parts of the court file that are missing or that the alleged missing parts could have affected the quantum of the taxation.

20. Finally, I find no merit in this Reference. The Chamber Summons dated 23<sup>rd</sup> September, 2021, is hereby dismissed in its entirety with costs to the Respondent.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 21<sup>ST</sup> DAY OF JANUARY, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

N/A for the Applicants

Ms. Anyango h/d for Mr. Yogo for the Respondent

Christine Omollo-C/A