



**Ahmed v National Bank of Kenya (Petition 117 of 2018)  
[2022] KEELRC 1383 (KLR) (28 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1383 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 117 OF 2018  
NZIOKI WA MAKAU, J  
JUNE 28, 2022**

**BETWEEN**

**MUNIR SHEIKH AHMED ..... PETITIONER**

**AND**

**NATIONAL BANK OF KENYA ..... RESPONDENT**

**RULING**

1. The Petitioner/Applicant filed Chamber Summons dated 19<sup>th</sup> July 2021 seeking for orders that this Honourable Court be pleased to vary and/or set aside the decision and ruling of the Taxing Officer delivered on 22<sup>nd</sup> April 2021 and remit the Party and Party Bill dated 7<sup>th</sup> December 2020 to a different Taxing Officer for taxation. The application which is a reference from the Deputy Registrar is supported by an affidavit sworn by the Petitioner/Applicant's advocate, Agwata Kwamboka Yvonne.
2. The Application is based on the grounds that on 9<sup>th</sup> October 2020, Honourable Justice Byram Ongaya entered judgment in favour of the Petitioner having held that the Respondent's decision to terminate him was unfair and unlawful and awarded him Costs of the Petition. That the Honourable Judge in calculating, computing and arriving at the compensation sum of Kshs. 26,520,000/- less (PAYE), based the calculation on the Petitioner's monthly salary that was payable in 2013 and not the salary at the time of his termination in 2016. That it is this compensation award that the Petitioner sought to vary in his review application of 21<sup>st</sup> October 2020 and the final award was subsequently varied to award the Petitioner a sum of Kshs. 31,315,680/- (Less PAYE).
3. That after the Petitioner filed his Party and Party Bill of Costs on 7<sup>th</sup> December 2020 drawn in the sum of Kshs. 2,335,722/- and effected service on the Respondents, the matter was mentioned on 16<sup>th</sup> December 2021 before Honourable Mutai who confirmed that parties had filed submissions on the Petitioners' Party and Party Bill of Costs, and reserved 22<sup>nd</sup> April 2021 for delivering of ruling on the taxation. However, Honourable Mutai was not sitting on the said 22<sup>nd</sup> April 2021 and the matter was not scheduled on the Days Cause list. That the Petitioner/Applicant thereafter wrote several letters



to the Deputy Registrar enquiring whether the Ruling on their Bill of Costs had been delivered and noting that the Judiciary e-filing platform indicated that the said Ruling had been delivered by Hon. Kyany'a on 23<sup>rd</sup> April 2021. That the Petitioner also requested to be supplied with a copy of the Ruling which remained inaccessible through the e-filing platform and that after paying the requisite fee, obtained a copy of the said Ruling. That the orders in the Ruling struck out the Petitioner's Bill of Costs dated 7<sup>th</sup> December 2020 on the grounds that pursuant to a consent dated 3<sup>rd</sup> December 2021, adopted and endorsed by Honourable Justice Nduma Nderi on 7<sup>th</sup> December 2020, parties agreed to bear their own costs.

4. It is the Applicant's assertion that the Honourable Deputy Registrar misdirected herself on the facts and made a grave error in principle in striking out the Petitioner's Party and Party Bill of Costs pursuant to the said consent where parties had agreed to each bear their costs of the said application and not costs of the main Petition. That the Honourable Taxing Officer misdirected herself in fact and erred in principle in relying on the consent order which compromised the application seeking a review order and not the whole judgment delivered on 9<sup>th</sup> October 2021. That the Reference has high chances of success as the Taxing Officer misdirected herself and that it is in the interest of justice that the orders sought herein are granted to meet the ends of justice.
5. The application is unopposed. In this motion, the singular issue is whether the parties are to bear their own costs or whether the Taxing Master should be directed to tax the bill of costs herein. In the suit, it is not disputed that the Petitioner was successful and pursuant to a review, the sum awarded was varied to Kshs. 31,315,000/- less PAYE. It was noted in the consent that each party was to bear their own costs.
6. The Taxing Master of the Court was therefore correct in declining to tax the matter as the consent of parties removed the matter of costs from her jurisdiction since parties agreed to bear their own costs. If the consent was intended to only apply to the application then why was the order of costs so precise? In my considered view the taxation of the bill of costs would be against the wishes of parties as expressed in their consent. As such the motion before me is unmerited and dismissed with no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JUNE 2022**

**Nzioki wa Makau**

**JUDGE**

