



**Njoroge v Ole-Ken Hotel (Cause 214, 215 & 217 of 2017 (Consolidated))  
[2022] KEELRC 13545 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13545 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 214, 215 & 217 OF 2017 (CONSOLIDATED)  
HS WASILWA, J  
DECEMBER 15, 2022**

**BETWEEN**

**NAOMI NJOROGE ..... CLAIMANT**

**AND**

**OLE-KEN HOTEL ..... RESPONDENT**

**RULING**

1. By a chamber summons dated July 7, 2021, the respondent sought for the following orders;
  - a. Spent.
  - b. That the honourable court be pleased to preserve the subject matter of the application through an interim order for stay of execution of the certificate of costs or such other consequential steps arising from Hon Deputy Registrar ruling on taxation dated June 7, 2022 pending hearing and determination of this application interpartes.
  - c. The honourable court be pleased to order stay of execution of the certificate of costs or such other consequential steps arising from the Deputy Registrar's ruling in taxation dated June 7, 2022, pending the hearing and determination of this reference.
  - d. The decision of the learned Deputy Registrar dated June 7, 2022 on the 1<sup>st</sup> claimant's/ respondent's party and party costs dated December 9, 2021, be set aside and taxed afresh by this honourable court.
  - e. In the alternative to prayer 4 above, the honourable court be pleased to set aside the decision of the learned Deputy Registrar dated June 7, 2022 and remit the matter for fresh taxation before a different taxing master pursuant to the honourable court's directions of the relevant principles.
  - f. That the costs of this application be provided for.



2. The application is premised on the grounds set out in the body of the motion and the supporting affidavit sworn by Darius Ngugi Mbugua, the Human Resource Office, legal services of Ole Ken Hotel, deposed upon on the July 8, 2022. In the said affidavit the affiant avers that the deputy registrar, Hon, Kyalo delivered her ruling on the claimant's party and party costs dated December 9, 2021, awarding the claimant Kshs 380,045.
3. That the taxing master failed to consider the awards given by this court in awarding the said costs, neither did she consider the submissions by the applicant dated March 22, 2022 in making her ruling.
4. That the instruction fees of Kshs 225,000 was awarded against the respondent's economic status instead of the subject matter, arriving at an award that is manifestly and unjustifiably exaggerated and anchored on serious errors of principles.
5. He urged this court to stay execution of the said costs until the reference filed herein is heard and determined.
6. The application is opposed by the claimant's /respondent by swearing an affidavit deposed upon on the September 7, 2022. Naomi Njoroge, stated that the court awarded them cumulative sum of Kshs 46, 833 for all the three claimant. That since they had filed different cases, the bill of costs with regards to instructions fees was to be awarded on each claim so that each claimant is awarded costs of Kshs 75,000, all adding up to Kshs 225,000.
7. It is stated that the ruling of the Deputy Registrar on the party and party costs was sound and the applicant is merely seeking stay of execution to delay the claimants from enjoying the fruits of their judgement.
8. The respondent prayed for the application to be dismissed with costs but that if the court is inclined to allow the application to do so conditionally and order the applicant to pay them the entire decretal sum with interests to them and the costs be deposited in an interest earning account in the joint names of the advocates pending fresh taxation by this court.
9. In the further affidavit deposed upon by Magdaline Njeri Mburu, the respondent's Human Resource Officer, the affiant maintained that the instructions fees awarded were excessive in the circumstances and that each item in the bill of costs was excessively awarded and did not follow the provisions of the *Advocates Remuneration Order*.
10. She prayed for the ruling delivered by Honourable Kyalo on the June 7, 2022 and the certificate of costs issued on June 14, 2022 be set aside and the party and party bill of costs be set aside.
11. Directions were taken for the application to be disposed of by way of written submission. Only the applicant's submissions filed on October 13, 2022 were on record at the time of writing this ruling.

### **Applicant's Submissions.**

12. The applicant submitted on two issues; whether the taxing master failed to put into consideration the provisions of paragraph 11 of the *Advocates Remuneration Order* and whether the taxing master committed any errors of principle while taxing item 1 of the claimant's party and party bill of costs.
13. On the first issue, it was submitted that the taxing master failed in principle to give reasons for awarding the claimant costs of 380, 045 when the cumulative award given to the three claimant was a paltry sum of Kshs 46,000. It was argued that all the other items were excessively awarded contrary to principle of taxation and the taxing master has not given any reason for awarding as such.



14. It was submitted that the taxing master failed to put into consideration the time taken, the complexity of the matter if any, amount in dispute, nature of the suit while awarding instruction as such awarding excessive sum. To support this, they relied on the case of *KANU National Elections Board and 2 others v Salab Yakub Farah* [2018] eKLR which emphasized on the principles governing taxation of costs were analyzed.
15. Accordingly, that this matter was a simple employment case and relatively straight forward and given the time taken and award given, the instructions fees awarded are not justified.
16. In conclusion, the applicant urged this court to allow its application and tax the party and party bill of costs afresh.
17. I have examined the averments of the parties herein. The main issue to determine is whether the taxing master erred in failing to put into consideration provision of paragraph 11 of the *Advocates (Remuneration) Order* and also committed errors of principles while taxing item No 1 of the claimant's party & party costs.
18. Item No 1 of the bill submitted before court concern instruction fees. In this claim however, there were 3 different claims filed and were later ordered consolidated by this court.
19. It is logical to assume that instruction fees was given for each claim before filing and despite the court consolidating the 3 claims for the sake of hearing.
20. The main contention by the applicant is that the taxing master failed to consider the award given at the end of the claim and awarded an excessive amount as instruction fees.
21. In order to avoid any miscarriage of justice, I will allow stay of execution of the taxation award and remit the taxation back for fresh consideration by a different taxing master.
22. Costs in the cause.

**RULING DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF DECEMBER, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Mburu S. K. for Respondent – present

Wanjiru for Applicant – present

Court Assistant - Fred

**NAKURU ELRC CAUSE NO. 214 OF 2017 Page 3 of 3.**

