



Omondi & 3 others v Catholic University of East Africa (Cause 457, 458, 459 & 460 of 2017 (Consolidated)) [2022] KEELRC 13530 (KLR) (15 December 2022) (Ruling)

Neutral citation: [2022] KEELRC 13530 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 457, 458, 459 & 460 OF 2017 (CONSOLIDATED)
CN BAARI, J
DECEMBER 15, 2022**

BETWEEN

**ERIC OYIER OMONDI 1ST CLAIMANT
DAVID O. OIMA 2ND CLAIMANT
MERCY FLORA ALUOCH 3RD CLAIMANT
SAMSON NTONGAI 4TH CLAIMANT**

AND

CATHOLIC UNIVERSITY OF EAST AFRICA RESPONDENT

RULING

1. Before court is the Respondent's motion dated September 9, 2022, brought pursuant to Order 45 of the Civil Procedure Rules, and Sections 1A, 1B, 3, and 3A of the Civil Procedure Act. The Respondent seeks orders that: -
 - i. Spent
 - ii. The Honourable Court be pleased to grant stay of execution as against the Respondent pending re-tabulation of the interest and costs owed to the Claimants.
 - iii. The court do proceed to re-tabulate the interest and costs owed to the Claimants by the Respondent
 - iv. The Costs of the application be provided for.
2. The application is supported by grounds on the face of the motion and the affidavit of Immaculate Muthoni. The motion is premised on warrants of attachment issued against the Respondent, and which the Respondent claim will disenfranchise it, while unjustly enriching the Claimants.



3. The Respondent avers that a separate matter then on-going, being ELRC Cause Number 461 of 2017- Joshua Wanjare v CUEA, and which was supposed to have been consolidated but was not, resulted in issuance of two warrants of attachment. It is the Respondent's assertion that matters having been consolidated, it is only fair that the costs claimed by the Claimant's agents; to wit Advocates and auctioneers, should not be replicated multiple times.
4. The Respondent further contends that it was not involved in the taxation of the Bill of costs against the rules of natural justice.
5. The Claimants opposed the motion vide a replying affidavit sworn by Sharon Achieng Omollo, on October 21, 2022. The deponent avers the Claimants herein filed four separate claims against the Respondent and due to their similarity, the four claims were consolidated in the interest of an expeditious determination.
6. The Claimants aver that parties agreed on prayers numbers a, b, and c of the statement of claim, but disagreed on the issues of compensatory damages, interest and costs, and for which the court had to make a determination upon parties filing submissions on the three issues.
7. The Claimants contend that court rendered judgment on December 9, 2019, wherein, it declined to grant compensatory damages, but allowed costs of the suit and interest on the unpaid salaries for each of the Claimants from January 1, 2016, until payment in full.
8. It is the Claimants' assertion that ELRC Cause No 461 of 2017, was heard separately and could not have been muddled by the consolidation of Causes Nos 457, 458, 459 and 460, that are subject of the judgment in question herein. The Claimants further aver that ELRC Cause No 461 of 2017, is still pending judgment before Justice Radido.
9. The Claimants depose that the Respondent's complaint herein is an objection on taxation and the taxing masters decision, which is provided for under Rule 11 of the Advocates Remuneration Order and which has a strict time line that has since lapsed.
10. The Claimants aver that though served with taxation notices, the Respondent elected not to attend court and cannot now be heard to say that they did not participate in the taxation process.
11. The Claimants further aver that costs having been taxed separately, the issuance of separate warrants of attachment is proper in the circumstances and that the figures on the warrants are a true reflection of the what is due and owing from the Respondent to the Claimant both having been awarded by consent and through a valid taxation process.
12. Parties urged the application orally before court on November 7, 2022, where they reiterated their grounds in support and those in opposition through the replying affidavit.

Determination

13. I have considered the application, the grounds and affidavit in support, the Claimants' replying affidavit and the oral submissions by both parties. The Respondent's prayers are for orders of stay of execution of the judgment in this matter pending re-tabulation of interest and costs payable to the Claimants and an order for re-tabulation of the interest and costs stated herein.
14. The Respondent's prayer for stay of execution will only hold, if prayer two on re-tabulation of costs and interests owed to the Claimants is allowed.



15. The amounts payable to each of Claimants are figures arrived at by consent of the parties and adopted by the court as a judgment. The Court only made a determination on costs and interest being issues that parties could not agree on.
16. The impugned judgment reads inter alia: -
 - “ 11. However, the court finds that the Claimants suffered loss and great inconvenience by fact of the late payment and considers it appropriate to order award of payment of interest in favour of each of the Claimants on the amount previously owed, but not paid, calculated at court rates from the 1st of January, 2016, up to the time the full amount were paid in full.
 12. The Respondent is also to pay the costs of the suit.”
17. The trial court from the afore stated caption, did not specify whether the order on costs were to apply to each Claimant or whether the same were to be taxed as a consolidated bill on account of the consolidation of the suit. In *Grace Wangui Ngenye v Wilfred Kiboro & another* [2013] eKLR, Ougo J, citing Judicial Hints on *Civil Procedure 2nd Edition* by Kuloba J stated thus: -

“ where suits or appeals are consolidated there should be an apportionment of costs including the instruction fees. The advocates for the parties cannot expect to be paid twice over the same work because he has won three actions”
18. The issues raised in the instant application are matters that would have been addressed if a reference was lodged with the court in respect of the taxation of the bills of costs, but none was filed. Further, the Respondent’s assertion that it did not participate in the taxation process, is not supported by the court record.
19. Notices were evidently issued upon the Respondent to attend court for purpose of taxation of the bills of cost, but which invites the Respondent declined to honour. There was in my view, nothing more the Claimants would have done to procure the Respondent’s attendance on the taxation date. The failure to participate as submitted by the Claimants, is by choice, and it has now to live with the painful consequences.
20. Further, the bills of costs in the four matters proceeded for taxation on January 20, 2021. The motion herein was filed on September 15, 2022. The filing of a reference per the Advocates Remuneration Order has to be done within fourteen (14) days of receipt of the reasons for the taxation, yet the Respondent now brings this application, which in any event does not qualify as a taxation reference, more than a year later, way beyond the fourteen (14) days allowed under Rule 11 of the *Advocates Remuneration Order*.
21. In my view, the Respondent’s application is fatally defective and is for dismissal. Accordingly, the motion dated September 9, 2022, is found to lack merit and is hereby dismissed.
22. In the interest of bringing this matter to a close, I make no orders as to costs.
23. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 15TH DAY OF DECEMBER, 2022.

CHRISTINE N. BAARI

JUDGE



Appearance:

Ms. Anuro present for the Claimants/Respondents

Ms. Ouma h/b for Mr. Obara for the Respondent/Applicant

Christine Omollo – C/A

