



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO 567 OF 2017**

**LYDIA AMONDI OKOTH.....CLAIMANT**

**VERSUS**

**COMPACT FREIGHT SYSTEM LIMITED.....RESPONDENT**

**RULING**

1. This Reference proceeds from the Respondent's Objection to a Ruling on Taxation delivered by the Deputy Registrar of this Court, **Hon Lesootia Saitabu** on 25<sup>th</sup> February 2021.

2. The Respondent's Objection is contained in a Chamber Summons dated and filed in court on 5<sup>th</sup> March 2021, by which the Respondent seeks an order setting aside the Ruling by the Taxing Master and directing that the Claimant's Party and Party Bill of Costs dated 3<sup>rd</sup> September 2020 be re-taxed.

3. The Chamber Summons is supported by an affidavit sworn by the Respondent's General Manager, Peter Ng'ang'a and is based on the following grounds:

a) By a ruling delivered on 25<sup>th</sup> February 2021, the Deputy Registrar, **Hon Lesootia Saitabu**, in his capacity as the Taxing Master, taxed the Party and Party Bill of Costs filed by the Claimant;

b) The Respondent is aggrieved by the whole of that decision and has filed a Notice of Objection and Reference herein;

c) As a result of the ruling delivered on 25<sup>th</sup> February 2021, there is an imminent threat that the Claimant will proceed with execution for the entire decretal sum, which includes the taxed costs, to the detriment and prejudice of the Respondent, who is pursuing a Reference;

d) From the record of the court proceedings, it is apparent that the Claimant is a person of humble means. The Claimant has not disclosed her means of income. It is therefore clear that if the entire decretal sum now standing at Kshs. 506,574 is paid over to the Claimant, she will not be in a position to refund the same even if the Reference herein succeeds. Such a situation will occasion the Respondent substantial loss;

e) The Respondent has an undoubted right to pursue a Reference against the aforesaid decision of the Taxing Master, which right ought to be protected by the Court. The said right will be defeated if an order for stay of execution sought herein is not granted as the Claimant will execute for the entire decretal sum, which includes the taxed costs;

f) The ruling delivered by the Taxing Master on 25<sup>th</sup> February 2021 on the Claimant's Party and Party Bill of Costs contains fundamental errors that warrant the said ruling to be set aside for the following reasons:

a) There is a fundamental error committed by the Taxing Master wherein in the aforesaid ruling, he erroneously represents that the Respondent did not respond to the Party and Party Bill of Costs filed by the Claimant;

b) There is an error of principle committed by the Taxing Master in the manner in which the Taxing Master generally assessed the Bill of Costs. Arithmetically speaking, the computation of the taxation does not add up.

4. The Claimant's response to the Respondent's objection is by way of a replying affidavit sworn by his Counsel, Kitonga Kiiva on 19<sup>th</sup> March 2021.

5. Counsel states that subsequent to the judgment delivered by the Court on 16<sup>th</sup> July 2020, the Claimant filed her Party and Party Bill of Costs dated 3<sup>rd</sup> September 2020, upon which a notice of taxation was issued on 10<sup>th</sup> September 2020.
6. The taxation notice was served upon the Respondent and the Bill of Costs was set down for taxation on 22<sup>nd</sup> October 2020, by which date the Respondent had filed written submissions dated 14<sup>th</sup> October 2020.
7. Counsel for the Claimant points out that there was no appeal against the judgment and the decretal sum remains undisputed.
8. Counsel terms the present application as a smokescreen filed to prevent the Claimant from enjoying the fruits of her judgment.
9. Both parties filed written submissions on the Respondent's objection and reference.
10. In its submissions filed on 29<sup>th</sup> March 2021, the Respondent submits that the ruling delivered by the Taxing Master, on 25<sup>th</sup> February 2021 ought to be set aside for two reasons. First, is what the Respondent refers to as a fundamental error by the Taxing Master, who is accused of erroneously representing that the Respondent had not responded to the Bill of Costs filed by the Claimant. Second, is what the Respondent terms as an error of principle committed by the Taxing Master in his general assessment of the Bill of Costs.
11. In her submissions filed on 7<sup>th</sup> April 2021, the Claimant terms the contention that the Taxing Master had failed to consider the Respondent's submissions as misleading. In this regard, the Claimant drew the attention of the Court to the Ruling on Taxation in which the Taxing Master mentions the Respondent's submissions.
12. In his ruling the Taxing Master states thus:

***“I have considered the billed items and submissions by the respondent together with authorities cited therein and tax the bill as hereunder:”***

13. From the record, the Respondent filed written submissions on the Party and Party Bill of Costs dated 3<sup>rd</sup> September 2020, and according to the Taxing Master, this is what he considered in arriving at his decision.
14. The submission that the Taxing Master proceeded to tax the Bill of Costs on the premise that there was no input from the Respondent is therefore misleading. This finding is not in any way dented by an earlier statement in the ruling that the Respondent had not filed a response.
15. As regards the complaint regarding the general assessment of the Bill of Costs I have this to say; a reference on taxation such as the one now before me is not a matter of mathematical precision. In ***Premchand Raichand Ltd & another v Quarry Services of East Africa Ltd & another [1972] E.A 162*** it was held:

***“The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award was somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”***

16. **Ringera J** (as he then was) followed a similar trajectory in ***First American Bank of Kenya v Shah & others [2002] 1 E.A 64*** where he stated:

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

17. In pursuing its Reference, the Respondent goes further to submit that because the ruling by the Taxing Master shows Kshs. 160,775 as the amount taxed off, then the Bill of Costs ought to have been be taxed at nil amount. A simple reading of the ruling by the Taxing Master will reveal that the entry on amount taxed off was an obvious typographical error, which this Court is empowered to correct.
18. The law as it stands is that a Judge will only interfere with the assessment of the Taxing Master in exceptional cases (see ***KTK Advocates v Baringo County Government [2017] eKLR***).
19. Overall, this Court finds no justifiable reason to interfere with the taxation ruling issued by the Taxing Master.
20. The Respondent's Chamber Summons dated 5<sup>th</sup> March 2021 is therefore declined with costs to the Claimant.
21. The interim orders granted on 23<sup>rd</sup> March 2021 are vacated.
22. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 15<sup>TH</sup> DAY OF APRIL 2021**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kitonga for the Claimant

Mr. Gikandi for the Respondent