



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2093 OF 2014

BETWEEN

JOSEPH MUMALI WANGA CLAIMANT

VERSUS

BLESSED T.C. WORLD CLASS SPARES LIMITED.....RESPONDENT

RULING

1. Judgment was delivered in favour of the Claimant for the sum of Kshs. 48, 333.30, on 15th December 2018.
2. The Claimant was also granted costs.
3. He proceeded to file his Bill of Costs, which was taxed at Kshs. 165,266, more than 3 times the principal amount awarded in the Judgment
4. Certificate of Taxation issued on 11th December 2019.
5. The Respondent filed an Application dated 9th June 2020, asking the Court to review and set aside the decision of the Taxing Officer, dated 5th December 2019.
6. The Advocate explains that on the date of taxation, he was in the wrong Court, having misread the Cause List. By the time he realized his error, the Bill had already been dealt with. He sought audience with the Taxing Officer, and was informed by the Court Assistant, that Respondent's Submissions had been received in Court, and would be taken into account, when the Taxing Officer retired to make the Ruling.
7. The Ruling however, indicated that the Respondent had failed to participate in taxation and did not file Submissions.
8. The Respondent submits that the amount of Kshs. 165,266 is excessive and unreasonable, considering the amount granted in the Judgment of Kshs. 48,333.30.
9. The Taxing Officer applied Schedule 6 of the Advocates Remuneration Order, which applies to the High Court, instead of Schedule 7, applicable to Subordinate Courts.
10. The Respondent invokes Rule 58 of the Advocates Remuneration Order, which requires that: in causes or matters which, having regard to the amount recovered or paid in settlement or the relief awarded could have been brought in a Resident Magistrate's Court, or other Subordinate Court, costs shall be on the scale applicable to Subordinate Courts, unless the Judge otherwise orders.
11. The Claimant relies on the Affidavit sworn by its Advocate, Upendo Ignacious Allan, on 28th January 2021.
12. The Advocate explains at paragraph 3 of his Affidavit, that the Bill of Costs was drawn and taxed pursuant to Schedule 7 of the Advocates Remuneration Order, 2014. This being a High Court matter, the Advocate states at paragraph 4 of his Affidavit, that the applicable Schedule is Schedule 6 and not Schedule 7.

13. The amount awarded in the Judgment is distinct from that given by the Taxing Officer. There is no error on the part of the Taxing Officer. The Respondent submits that the E&LRC is not a Subordinate Court. Matters of costs are at the discretion of the Court. The

Respondent did not make reference within 14 days as required under paragraph 11 of the Advocates Remuneration Order.

14. In response to the Claimant's submission on failure to make reference within 14 days, the Respondent submits that leave was granted by the Trial Judge on 27th May 2020, to file the Application within 14 days of the order. The Respondent complied.

The Court Finds: -

15. There is an obvious disconnect, between what was granted to the Claimant in the Judgment, and what he received as costs on taxation.

16. The principal sum and taxed costs are distinct as submitted by the Claimant, but there is an inescapable correlation under the Advocates Remuneration Order. The amount granted in the Judgment, ordinarily determines amount allowable, as the instructions fees.

17. Judgment value was Kshs. 48, 333.30. Rule 58 of the Advocates Remuneration Order should have applied. Where the amount given at the High Court in the Judgment, could have been given within the jurisdiction of the Subordinate Court, the applicable scale is that which regulates party and party costs, in the Subordinate Court.

18. The Claimant appears to misapprehend the submission of the Respondent, bringing in an unnecessary argument, about the E&LRC being a Superior Court, and not a Subordinate Court. The correct position under Rule 58 of the Advocates Remuneration Order, is that if a matter could have been filed at the Subordinate Court, taxation shall be in accordance with the Schedule applicable to the Subordinate Court, unless the Judge otherwise orders. The position would be the same if the Judgment for the amount of Kshs. 48,333.30 originated from the High Court or the Environment and Land Court. The issue is not about the E&LRC being a Superior or Subordinate Court. An assessment of costs thrice the principal sum given on the Judgment, is obviously distorted.

19. The correct Schedule should have been Schedule 7, which regulates taxation of party and party costs, in the Subordinate Courts. The Judge did not allow application of Schedule 6.

20. The Claimant makes contradictory statements on the applicable Schedule, at paragraphs 3 and 4 of the Replying Affidavit.

21. The Court is satisfied that the Respondent sought, and obtained leave of the Court in filing of the Application under consideration. The Application is properly before the Court.

IT IS ORDERED: -

a. The Application filed by the Respondent, dated 9th June 2010 is allowed.

b. The decision of the Taxing Officer is reviewed and set aside.

c. Taxation shall be conducted afresh, in the presence of both Parties, and under the correct Schedule 7 of the Advocates' Remuneration Order.

d. Costs in the cause.

DATED AND SIGNED AT CHAKA, NYERI COUNTY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 9TH DAY OF APRIL 2021

JAMES RIKA

JUDGE