



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

MISC CIVIL APPLICATION NO. 45 OF 2019

PATRICK WANYONYI KHAEMBA.....APPLICANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. Patrick Wanyonyi Khaemba (the applicant) moved the Court on 1 October 2019, seeking orders:

(i) THAT the decision of the Taxing Officers in Kisumu ELRC Petition No. 30 of 2017 assessing the advocate's bill of costs at Kshs 261,129/- dated 18/9/2019 and or any certificate of costs arising therefrom be set aside in its entirety and or be reviewed.

(ii) THAT in the alternative, the Court be pleased to remit all the items in party/party bill of costs dated 16/11/2018 for taxation before a different taxing master with appropriate directions to a taxing officer as the Court shall deem fit for reconsideration.

(iii) THAT the costs of this application be borne by the Respondent.

2. The Teachers Service Commission (the Respondent) filed a replying affidavit in opposition to the Summons on 3 July 2020, and pursuant to Court directions, the applicant filed his submissions on 31 May 2021. The Respondent filed its submissions on 8 July 2021.

3. In support of the Summons, the applicant contended in brief that the bill of costs and notice of taxation were not served upon him; that the taxing officer made an error of principle by making an excessive award of costs and that the taxing officer did not exercise her discretion judicially.

4. In his submissions, the applicant submitted on two related issues, whether the advocate for the Respondent was entitled to costs being a state/public officer and that the Respondent did not prove through receipts/documents some of the items allowed.

5. In opposition to the Summons, the Respondent countered that the Taxing Officer considered all the relevant factors such as the complexity of the issues raised in the Petition; the value of the subject matter and the voluminous nature of the documentation filed and that the Officer awarded the minimum instruction fees for opposing the Petition; that the applicant had not outlined the principles of law disregarded by the Taxing Officer; that the applicant was given reasons for the taxation though he sought for the same on the day of the Ruling; that the bill of costs and notice of taxation were served upon the applicant's address on record and that by dint of section 32A(2)(b) of the Advocates Act, in-house counsel were entitled to charge fees.

6. The Court has considered the Summons, affidavits and submissions.

Service of the bill of costs and notice of taxation

7. The Respondent produced evidence that it served the applicant through registered post at the postal address he had included in the Petition, and the Taxing Officer found as much.

8. This Court has no reason to find otherwise or agree with the applicant that he should have been served in Mandera when he did not formally file a notice of address for service in Mandera.

Whether in-house advocate can charge fees

9. Section 32(2)(b) of the Advocates Act allows an in-house counsel to charge legal fees at a rate not below the prescribed fees and the challenge posed by the applicant in that respect, without disclosure of a contrary statutory provision is without merit.

10. Be that as it may, the Bill of Costs filed and taxed was a party and party bill of costs, and not an advocate and client bill of costs, and therefore the taxed costs would accrue to the party and not its in-house counsel.

Exercise of discretion

11. In the Ruling on taxation, the taxing officer allowed the minimum prescribed fee of Kshs 100,000/- for opposing the Petition, and the Court is unable to find wrong or injudicious exercise of discretion.

12. The next item which was taxed was *getting and preparing for trial fees* which was allowed at Kshs 33,333/-.

13. The Petition was struck out at a preliminary stage upon a Motion by the Respondent before it had been confirmed for trial (at least according to the material placed before this Court) and, therefore, this Court finds the taxing officer wrongly exercised her discretion by allowing the getting up fees.

14. The applicant challenged the taxing of costs in regard to items 3 to 37 on the ground that the same were way out of the appropriate scale and that supporting documentation was not provided.

15. The Court has looked at the items.

16. They comprise perusal of pleadings/documents, drawing and filing of documents, serving of the documents and attendances before the registry and the Court.

17. The applicant did not demonstrate that these costs were not drawn according to scale.

18. For disbursements, the Respondent billed them under items 32 to 37. The applicant did not provide any evidence that the disbursements were not incurred (filing notice of appointment, grounds of opposition, submissions, bill of costs and affidavit of service).

Conclusion and Orders

19. From the foregoing, save for fees for getting up and preparing for trial, the Court finds no merit in the Summons, and it is dismissed with further costs.

20. The Court regrets that the Ruling could not be delivered on 27 October 2021 due to other official engagements.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF NOVEMBER 2021.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR APPLICANT IN PERSON

FOR RESPONDENT MR ANYUOR, ADVOCATE, TEACHERS SERVICE COMMISSION

COURT ASSISTANT CHRISPO AURA