



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 216 OF 2015**

*(Before Hon. Justice Mathews N. Nduma)*

**PETER OKELLO OKELLO .....PLAINTIFF/CLAIMANT**

**VERSUS**

**THE CHAIMAN, BOARD OF GOVERNORS**

**ST. LUKE ODIADO SECONDARY SCHOOL .....1<sup>ST</sup> RESPONDENT**

**THE SECRETARY, BOARD OF GOVERNORS**

**ST. LUKE ODIADO SECONDARY SCHOOL.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicants in the application dated 26<sup>th</sup> July 2019 prays the Court to set aside the taxation done by the taxing master on the grounds that the taxation was done in the applicant’s absence and that the taxing master awarded excessive interest on the decretal amount.
2. The applicants state that they were not served with a hearing notice of the taxation of the bill of costs. That the interest is excessive in that it could not have accumulated to Kshs. 131,083 from the date of Judgment delivered on 19<sup>th</sup> February 2019.
3. The application is opposed vide a replying affidavit of Carol, Auma Peter the administrator Ad litem of the claimant who deposes that the matter was set down for taxation on 21<sup>st</sup> May 2019 but the Deputy Registrar adjourned it to the 11<sup>th</sup> June 2019 to allow proper service of taxation notice to the respondent/applicant.
4. That on 11<sup>th</sup> June 2019, the Deputy Registrar proceeded with the taxation having been satisfied that the respondent/applicant had been duly served.
5. That the objection in respect of the interest on the decretal sum is unfounded and the application is an abuse of the Court process.

**Determination**

6. The proper way to object a ruling on taxation is for the aggrieved party to file an objection to the taxing master within 14 days seeking reasons for the taxing of the specific items being objected to. Upon receipt of the reasons then the objector is required to file a reference to the Judge to have the taxation and/or specific items objected to be reviewed and/or set aside.
7. The Court is satisfied that no such steps have been taken by the respondent/applicant in this matter and the application before court is misconceived and an abuse of the process of the court.
8. Regarding the issue of interest charged on the decretal sum, it is apposite to note that interest to be levied on the award of terminal benefits was back dated by the Judge in the Judgment to the date of filing suit which was 1<sup>st</sup> July 2015. This explains the interest imposed by the taxing officer in the sum of Kshs. 131.083.
9. In the whole the application lacks merit and is dismissed with costs.

**Ruling Dated, Signed and Delivered at Nairobi this 16<sup>th</sup> day of July 2020.**

**Mathew N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**Mathews N. Nduma**

**Judge**

**Appearances:-**

Mr. Nalongo for Respondent/Applicants.

Mr. Mushidi for Claimant/Respondent.

Chrispo: Court Clerk.