



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 16 OF 2013

JOHN OSEWE OGOLA AND 46 OTHERS.....CLAIMANTS

VERSUS

RAGHBIR SIGN SANDHU T/A HOTEL ROYALE.....RESPONDENT

RULING

1. In the application dated 25th June, 2020, the applicant prays for three Orders to wit: -

(i) Stay of execution.

(ii) Leave to file a reference out of time and

(iii) Setting aside of the Certificate of Party and Party bill of costs following the Deputy Registrar's ruling delivered on 27th March, 2019.

2. The application is grounded on reasons set out in the Notice of Motion and supporting affidavit that the Deputy Registrar delivered a ruling on Costs on 27th March, 2019 in the absence of the applicant; That the notice of delivery of the ruling on cost was received by the applicant on 21st May, 2019 approximately 51 days after the ruling; That the applicant alarmed by the inordinate high cost began the process of reference by seeking reasons from the Deputy Registrar.

3. That the lateness to file reference was for reasons beyond the control of the applicant.

4. That the Judgment sum was for Kshs. 3,939,882 which was delivered on 27th January, 2019. At the time, the Advocates Remuneration Order of 2010 was applicable to the matter because one of 2014 came into effect on 11th April, 2014 through Gazette Supplement No. 142.

5. That Deputy Registrar erroneously taxed the costs of the Plaintiffs at Kshs. 3,600,000 which award is inordinately high and out of tune with the scale fees prescribed in the applicable remuneration Order and also Principles set out in the case of **Joreth –vs Kigano.**

6. That even going by the 2014, remuneration Order, instructions fees for a sum of Kshs. 3,939,882 would have been Kshs. 119,098 and would not have surpassed 250,000.

5. That the Ruling of the Deputy Registrar has dealt great injustice to the applicant which needs to be corrected because it distorts all the settled principles on access to justice and fair hearing.

6. That the award be set aside and the bill remitted back to the taxing officer for fresh taxation.

7. The application has been opposed by the Claimants/respondents primarily on grounds that the matter has been overtaken by events in that on or about 29th May, 2020 the Court issued Orders following application by the Claimant prohibiting the applicant and/or Garnishee from transferring all the money owed to the Claimant from account No. 95850100004932 which Order has been effected.

8. That the only remaining order is for the Court to direct the Garnishee to transfer Kshs. 4,400,000 to the account of Mwamu and Company Advocates for the decree holder.

9. That the applicant did not disclose this fact and the prayers sought should not be granted for that reasons alone as was decided in the case of **Tata Access Floor –vs- Boswell (1990) 3 ALL ER303.**

10. That there was also material non-disclosure by the applicant /Judgment debtors, that there was a consent between the parties on 20th January, 2020 which the Judgment debtor has not complied with. The consent directed “That the respondent to provide a bank guarantee for the disputed amount of Kshs. 4,400,340. That Court Orders are not made in vain.

11. That the applicant has not met the threshold set out in **Butt –vs- Rent Restrictions Tribunal (1982) KLR** for the Court to exercise its discretion in favour of an applicant for stay of execution. That the discretion should be exercised in a way as not to prevent an appeal.

12. Furthermore, the prayers for stay are sought way out of time the period in which a reference ought to have been filed. That the prejudice Order for stay would cause the respondent, ought to be weighed in view of the inordinate delay in bringing the application.

13. That the application be dismissed with costs.

Determination

14. Upon a careful consideration of the issues raised in the application, the Court is satisfied that serious errors may have occurred in the taxation of the bill of costs in favour of the Claimants/Respondents such that the taxed costs appear inordinately high.

15. The Court is also satisfied that the ruling on the taxed costs was delivered by the Deputy Registrar in the absence of the applicant.

16. That the applicant did not receive notice of the ruling on taxation until after about 51 days.

17. That the applicant commenced application to have the reference admitted out of time immediately and has proceeded to engage the claimants/respondents in settling the decretal sum less the disputed taxation.

18. That the matters raised by the respondent do not negate the overriding objective of the Courts to ensure fair access to the Courts of law by all by ensuring award of costs remains reasonable, fair and just as guided by the Remuneration Order, 2014.

19. The Court is satisfied that the Ruling of the Deputy Registrar did not meet the aforesaid criteria in awarding costs of Kshs. 3,600,000 in respect of a judgment sum of Kshs. 3,939,882.

20. It is in the interest of justice that the said ruling on taxation is set aside and the matter is remitted back to the Deputy Registrar to be re-taxed afresh.

21. Accordingly, the application is granted as prayed and the taxed costs of Kshs. 3,600,000 set aside and matter remitted to the Deputy Registrar to be taxed afresh.

Dated and Delivered at Nairobi this 27th day of November, 2020.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th 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:

N.E. Mogusu for Applicant

Mwamu for respondent

Chrispo – Court clerk