



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 383 OF 2015

(Before Hon. Justice Mathews N. Nduma)

YVONNE ACHITSA ODEDERE.....CLAIMANT

VERSUS

MASENO UNIVERSITY.....RESPONDENT

RULING

1. The chamber summons application dated 12th September 2018 seeks the court to quash the taxing officer's decision on item numbers 1, 2, 5, 17, 20, 21 and 23 on the claimant's bill of costs dated 12th June 2018.
2. That the bill be remitted back to the learned Deputy Registrar for re-taxation on the items.
3. The Basis for the application is that the Deputy Registrar acted on the wrong principle and thus arrived on the wrong decision. That the Deputy Registrar should have based her assessment on item 1 of the said bill of costs on the award in the judgment of the court and not in the sum as presented in the statement of claim.
4. That the learned Deputy Registrar erred in law in importing evidence into the ruling and in relying on facts which had not been proved or pleaded.
5. The reference is opposed vide claimant/respondent's grounds of opposition filed on 2nd October 2018 to wit:-
 - (a) That the Application is incompetent, misconceived and totally defective.
 - (b) That the application is bad in law, incompetent and improper.
 - (c) That the application is therefore incredibly defective and ought to be dismissed.

Determination

6. The Bill of costs dated 12th October 2018 was filed by Otieno Ogola and Company Advocates following the award of costs.
7. On 24th July 2018, the Deputy Registrar taxed the bill at Kshs 503,492.00 all-inclusive and in the ruling the taxing master taxed
 - Item 1 at Kshs 250,000
 - Item 2 at Kshs 83,334
 - Item 5 at Kshs. 94,460
 - Item 17 at Kshs. 15,000
 - Item 20 at Kshs 15,000

Item 21 at Kshs 15,000

And item 23 at Kshs. 15,000.

8. The master was guided by schedule 6 of the ARO 2014.

9. It is apparent that in taxing the aforesaid items, the taxing master was guided by the figures pleaded in the statement of claim dated 27th October 2015 and filed on 28th October 2015.

10. In the case of D. Njogu and Co. vs Kenya National Capital Corporation (2005) eKLR Justice F.A Ochieng stated that:-

“So, whilst I accept that the advocate may have been instructed to sue for not only the principal sum, but also for interest thereon, at a specific rate, that fact alone cannot mean that the claim would be successful. In other words, the court could dismiss the whole claim, or grant part of the principal sum. Alternatively, the court could grant judgment for the whole principal sum, but without interest, or even with interest at rates other than those claimed. Effectively, therefore the value of the subject matter of the suit would remain indeterminate until the court passed its verdict on the case.

However, as soon as the court did pass judgment, the value of the subject matter would have been determined. In those circumstances, I do not accept the respondent’s contention that in ascertaining the value of the subject matter, the Taxing Officer should still be guided by the sums claimed in the Plaintiff. In my considered view, as soon as the court passes judgment on a claim, the value of the subject matter is to be ascertained by reference to the judgment, as opposed to the statement of claim.

I therefore hold that by basing the calculations of the instruction fee on the sum which was claimed, the Taxing Officer made an error in principle. She ought to have derived the value of the subject matter from the judgment. Accordingly, I do find merit in the reference dated 6th July 2005”.

11. From the foregoing rediction by the learned judge which I fully agree with, the Taxing Officer made an error in principle by basing the calculations of the instruction fee on the sum which was claimed. She ought to have derived the value of the subject matter from the judgment.

12. The value of the subject matter was indeterminate until the court passed its judgment on the case. The value was determined as such in the judgment of the court.

13. Furthermore, the taxing master as was stated in Danson Mutuku Mueno vs Julius Muthoka Mueno and others Machakos HCC Civil Appeal No. 6 of 1991 per Mwera – J. was bound to give reasons for exercising her discretion and since none were given in the ruling on the disputed items it is just and fair to set aside the taxed sum on all the disputed items and remit the items back to the Deputy Registrar to apply the correct principle as provided in this ruling and provide reasons for the re-taxation to be done.

14. Accordingly, the reference succeeds and items 1, 2, 5, 17, 20, 21 and 23 remitted back to the Deputy Registrar for re-taxation.

15. Costs follow the outcome of the reference.

Ruling Dated, Signed and delivered this 21st day of March, 2019

Mathews N. Nduma

Judge

Appearance

M/S Machage for respondent/applicant

Mr. Ogola for claimant/respondent

Court clerk - Chrispo