



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 75 OF 2013

{Formerly Nairobi Cause No. 546 of 2010}

(Before Hon. Justice Mathews N. Nduma)

FREDRICK JACOB OCHIENG OBURA.....1ST CLAIMANT

JOSEPH DIDA.....2ND CLAIMANT

ALPHONSE LUKE KITECHI.....3RD CLAIMANT

EDWARD AGOLA.....4TH CLAIMANT

JOSHUA O. NYAMWAYA.....5TH CLAIMANT

MARTIN OGADA.....6TH CLAIMANT

TOM OGALO.....7TH CLAIMANT

AGGREY AWUONDA.....8TH CLAIMANT

VERSUS

KISUMU MUNICIPAL COUNCIL.....1ST RESPONDENT

KISUMU WATER AND SEWERAGE COMPANY.....2ND RESPONDENT

RULING

1. The applicant filed application dated 15th October 2018 on the even date seeking stay of execution of the order of taxation made on 31st August 2018 pending the hearing and determination of the Application interpartes.
2. The Application is brought in terms of *Rule 11 (1) and (2) of the Advocates (Remuneration) order 1962* and is on the grounds that, the bill was taxed at Kshs. 1,000,225 and a stay of execution thereof for 30 days was granted on 13th August 2018 when taxation was done.
3. That the applicant is aggrieved by the tax master's decision in that she did not take into account relevant factors hence awarded costs that were manifestly high as to constitute an injustice and unjust enrichment. That the decision was not rendered judiciously and with sound legal reasoning.
4. The application is opposed vide a replying affidavit of the 1st claimant, Fredrick Jacob Obura in which he deposes that the taxing master did not err as alleged or at all in the award of costs. That he is advised by counsel for the claimants, Mr. Mwamu that the time within which to file a reference has lapsed and that the applicant has not sought and/or been granted leave to file the same out of time and thus the same is bad in law and should be dismissed.
5. That in terms of *Rule 11(2) of the Remuneration Order*, a reference ought to be filed within 14 days which period has since lapsed. That the delay in bringing the reference has not been explained thus is intentional or contumelious and not excusable as the applicant was in court

when the ruling was delivered.

6. That the application is brought in bad faith, bereft of truth, misconceived in law, and lacks merit.

7. That the application be dismissed with costs.

8. Rule 11(1) and (2) reads:

i. "Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

ii. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from receipt of the reasons apply to a judge by chamber summons which shall be served on all the parties concerned setting out the grounds of his objection"

9. In this matter the letter of objection to the taxing officer was dated 10th September 2018 whereas the taxation was done on 31st August 2018.

10. The objection was done more than 14 days from the date of taxation. The registrar communicated her reasons to the objector on 1st October 2018 and the application was filed on 15th October 2018 within 14 days from the date the reasons for taxation were given by the taxing officer.

11. It is the court's finding that the application before court was filed within the stipulated period despite the initial delay to raise objections with the taxing officer.

12. Regarding the substantive objection to the bill of costs the objections are set out under paragraph 8 of the supporting affidavit of Mr. Tom Odongo Managing Director of the 2nd respondent. The objection may be summarized as follows:

13. The taxing officer erred in only taxing items 1, 2 and 3 and failed to tax items 4 to 286 of the bill of cost dated 13th March 2018 without rendering sound reason for that. That the result of failure to tax items 4-286, was award of inordinately high bill of costs as to constitute an injustice. That the mathematical approach employed by the taxing master instead of considering each and every contested item of the bill of costs and rendering a reasoned ruling thereof was erroneous and unjust.

14. That item 1 of the bill ought to have been taxed at Kshs. 98,857 instead of Kshs. 126,000 due to application of the wrong principle. The getting up fees awarded at Kshs. 42,000 was as a result of the above error inordinately high.

15. That the bill of costs be set aside and it be remitted back to the taxing officer for re-taxation following the current principles of taxation contained in the Advocates' (Remuneration) (Amendment) order 2009.

16. Upon a careful consideration of the objections enumerated herein and in particular as set out in paragraph 8 (i) – (ix) the court is satisfied the taxing officer did not tax contested items 4-286 and applied the wrong principles in taxing item I in the bill of cost dated 13th March 2018.

17. Accordingly, the taxation by the Deputy Registrar and the ruling dated 31st August 2018 is set aside and the bill of costs referred back to the Taxing Officer to tax the bill of costs dated 13th March 2018 afresh. Costs of this application which follow the events to be taken into account in the subsequent taxation.

Ruling Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Ouma for Respondent/Objector

Mr. Mwamu for claimants

Chrispo – Court Clerk