



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.462 OF 2016

MARCOS INGUMBA EVUSA.....CLAIMANT

VERSUS

MENENGAI OIL LIMITED.....RESPONDENT

RULING

The respondent, Menengai Oil Limited filed application and Chamber Summons dated 19th June, 2019 and seeking for orders that there be a stay of execution of the Certificate of Taxation and that the court finds that the taxing officer erred in law in taxing and allowing the bill of costs in the sum of Ksh.127,757.00 without considering the response of the applicant.

The applicant is also seeking the court to find the taxing master's decision of 11th June, 2019 be set aside and the bill of costs be placed for taxation afresh before any other deputy Registrar other than Hon N Makau.

The application is supported by the affidavit of Joseph Muli and on the grounds that the deputy registrar erred in law and fact in taxing the bill of costs in the sum of Ksh.127,575.00 contrary to the provisions of Schedule VI of the Advocates Remuneration Order. The response made by the respondent was not considered and by allowing a higher scale when there was no such order was contrary to the Advocates Remuneration order and without any justifiable reasons. The cause having been filed before this court the deputy registrar ought to have applied the lower scale as the court deals with social justice.

In his affidavit Muli avers that he is the advocate for the respondent and on 11th June, 2019 the deputy registrar delivered decision on the bill of costs and found for the advocate in the sum of ksh.127,575.00. Such did not take into account that the instructions fee allowed under the Order is Ksh.45,000.00 and the advocate did not show any special circumstances to warrant the escalation of the bill to a higher scale. The Bill as taxed is contrary to Schedule VI of the Remuneration Order.

Mr Muli also avers that the respondent is willing to pay costs but such must be lawful and per the Remuneration Order.

The claimant in reply filed Replying Affidavit of Gladys Achieng Ndeda Advocate for the claimant and who avers that on 14th May, 2019 when the matter was scheduled for taxation of the party and party bill of costs the respondent filed a counter party and party bill of costs instead of submissions. On 11th June, 2019 the bill was taxed to ksh.127,575.00 and the claimant defended the claim as per the Advocates Remuneration Act.

The respondent has failed to itemise the particulars which they are opposed to. The bill of costs was taxed per the remuneration order.

On the Ruling the Deputy registrar of the court delivered on 11th June, 2019 it was noted that the bill was not opposed and the taxing officer proceeded to peruse the same, analyse and applied the court scale. There was also a finding that the items were drawn to scale and therefore tot al bill amounted to ksh.127,575.00.

The respondent has challenged the taxed bill on the grounds that the suit was filed with the court and the deputy registrar as the taxing master ought to have considered that costs are normally on the lower scale since the court is dealing with social justice.

This is a superior court of record, costs have been awarded to the claimant on good basis and putting into account the provisions of section 12(4) of the Employment and Labour Relations Court Act, 2011 order for the payment of costs and which costs should be paid in accordance with the applicable rules. Such does not therefore remove parties from the Advocates Remuneration Order or the applicable schedule on costs simply because a suit is filed with the court.

The Bill of costs before the Deputy Registrar being unopposed, the proper scale and analysis having been appropriately applied, the court finds no merit in the application dated 19th June, 2019 which is hereby dismissed with costs to the claimant.

Orders accordingly.

Delivered at Nakuru this 9th day of October, 2019.

M. MBAR?

JUDGE

In the presence of: