



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 98 OF 2016

(Before D. K. N. Marete)

JUDITH JEMELI KESSE.....CLAIMANT

VERSUS

MOI TEACHING AND REFERRAL HOSPITAL.....RESPONDENT

RULING

This is an undated and incomplete application seeking the following orders of court;

1. THAT this court do grant leave to the Respondent to file for review of taxed bill of costs out of time.
2. That the court be pleased to review, vary and or set aside the order made on the 15th day of November, 2017 taxing the Bill of Costs in this matter and Kericho E&LR CAUSE NO. 98 of 2016 and that the Bill of Costs be taxed on merit.
3. That costs of this application be provided for.

It has no grounds in its support on the face of the record.

The claimant/respondent in a Replying Affidavit sworn on 7th May, 2018 opposes the application. Further, in her written submissions of even date, she submits as follows;

...a reference can only be filed against the taxation if it was undertaken under The Advocates Act and or the Advocates Remuneration Order. The instant reference is therefore incompetent and untenable.

It is therefore her case that this taxation having not been based on the Advocates Act or rules has no standing before court.

The respondent/applicant opens her case and submits as follows;

The petitioner before you for determination is a taxation reference dated 5th February 2018. The main Claim/Petition was dismissed on 21st February 2017. The Respondents/Petitioner were awarded costs. The Respondent filed a party and party bill of costs on 30th June 2017. On 15th November 2018, the taxing master of this court assessed the bill (as per the Advocates Act and Remuneration Order) at Kshs 18,625/= to be paid by the Claimant/Respondent. The Respondent/petitioner is aggrieved by the taxing off of its direct expenses in the sum of Kshs 229,355/=. The Petitioner/Respondent has filed a Chamber Summons dated 5th February 2018. He prays that the Respondent's/Petitioner's bill of costs be reviewed and the decision of the taxing master dated 15th November 2018 be set aside and the taxed off disbursements in the sum of Kshs.229,355/= be reinstated.

This is a contest between what is taxable or not taxable in the event of litigation by a party using an in-house lawyer as opposed to a practicing advocate. In the instant case, the respondent/applicant utilized the services of her in-house lawyer and now claims and insists on a payment of Kshs.229,355.00 being costs of various imprest issued to such counsel to facilitate various attendances to court from Eldoret to Kericho. The claimant/respondent disputes this and agrees the amount of Kshs.18,625.00 awarded by the taxing master.

I agree with the claimant/respondent that in the event of an in-house lawyer, the only amount payable is a refund of expenses incurred by the in-house counsel. This must be demonstrated by verifiable evidence – receipt, on the part of the claiming party. The respondent/applicants

case of a refund of imprest issued and per diem payment does not suffice.

I am therefore inclined to dismiss the application with costs to the claimant/respondent.

Delivered, dated and signed this 26th day of June, 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Kirima, senior legal officer for the respondent/applicant.
2. Mr. Momanyi instructed by Annasi Momanyi & Company Advocates for the Claimant/respondent.