



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 67 OF 2014

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS.....CLAIMANT**

VERSUS

**MUTUGUTA FARMERS CO-OPERATIVE SOCIETY
LTD.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 15th July, 2016)

RULING

The claimant filed on 16.02.2016 an application by way of the chamber summons under rule 11 of the Advocates (Remuneration) Order, Section 12 of the Employment and Labour Relations Court, Section 3A of the Civil Procedure Act, and all enabling provisions of the law. The claimant has prayed for orders as follows:

- a. That the application is certified as urgent and the same be heard ex-parte in the first instance.
- b. That pending the hearing and determination of the application, stay of execution be and is hereby issued restraining the respondent from executing the court decree, certificate of taxation and all other consequential orders.
- c. That the Honourable Court be pleased to set aside the taxation of costs issued herein.
- d. That the respondent's bill of costs be taxed afresh granting the claimant leave to defend and raise objections to the bill of costs.
- e. That costs of the application be in the cause.

The application was supported with the affidavit of Boniface M. Kavuvi attached on the application.

The respondent opposed the application by filing on 23.02.2016 the grounds of opposition through Wahome Gikonyo & Company Advocates. The grounds of opposition were as follows:

- a. The application is misconceived and incompetent.
- b. The application is bad in law, a gross abuse of the process of the court and untenable.
- c. The application is fatally and incurably defective.
- d. The application is frivolous and vexatious.
- e. The application is otherwise without merit and should be dismissed with costs.

In an earlier application by the claimant in the same cause, this court gave orders on 06.11.2015 as follows:

1. The time for filing the objection to the taxing master's decision under subparagraph 11(1) the

Advocates (Remuneration) Order by the applicant is hereby extended from 14 days from 29.05.2015 to 14 days from the date of this ruling and the applicant to subsequently be at liberty to make a reference to the court in accordance with the provisions of paragraph 11 of the Order as may be necessary.

2. There shall be stay of execution proceedings in this suit until the lapsing of the 14 days prescribed in subparagraph 11(2) of the Advocates (Remuneration) Order and as extended in order 1 above.
3. In any event the parties are encouraged to compromise the issues in dispute in view of their subsisting collective and recognition agreements towards fostering good and cordial industrial relationships.
4. The applicant will bear the respondent's costs of the application.

The claimant signed the notice of objection to taxation on 18.11.2015 and filed the notice in court on 19.11.2015. Under Order 1 given by the court on 06.11.2015, the 14 days as extended lapsed on or about 21.11.2015. The court finds that the objection as filed by the claimant on 19.11.2015 was therefore within time as was extended by the court order. The claimant wrote to the court's deputy registrar on 30.11.2015 referring to the notice of objection filed on 19.11.2015 and requesting to be furnished with the reasons for the taxation in respect of the several items listed in the notice of objection. The deputy registrar replied on 18.01.2016 that the deputy registrar who taxed the bill was then not sitting and was still on leave so that in the circumstances the reasons for taxation could not be furnished as no reasons had been given by the taxing master. The claimant received that reply on 01.02.2016 and filed the present application on 16.02.2016.

Subparagraph 11(2) of the Advocates (Remuneration) Order required the filing of an application within 14 days where a party is dissatisfied with reasons forwarded by the taxing master. In the present case no reasons were provided and the court considers that in the circumstances of the case the claimant would be entitled to setting aside of the offensive taxation proceedings and the ensuing certificate of costs as applied for. While making that finding the court reckons that the application was filed about 2 days after lapsing of the 14 days prescribed in the subparagraph but having found that no reasons had been provided as they were said not to exist, the court considers that the 14 days as prescribed did not strictly apply in the present case and the application was filed without inordinate delay. Within the inherent powers of the court, the application is found permissible and in absence of reasons for taxing the items as requested for by the claimant, the application will succeed.

In conclusion, the claimant's application dated 12.02.2016 and filed on 16.02.2016 is hereby allowed with orders as follows:

- a. That the certificate of costs issued on 03.06.2015 is hereby set aside.
- b. That the respondent's bill of costs be taxed afresh granting the claimant leave to defend and raise objections to the bill of costs in the usual manner.
- c. The respondent to pay costs of the application.

Signed, dated and delivered in court at Nyeri this Friday, 15th July, 2016.

BYRAM ONGAYA

JUDGE