



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 509 OF 2010

RUTH GATHONI NGOTHO-KARIUKI.....CLAIMANT

VERSUS

REVEREND FESTUS K. KITONGA.....1ST RESPONDENT

RIGHT REVEREND DAVID RIITHO GATHANJU.....2ND RESPONDENT

REVEREND FRANCIS NJOROGE3RD RESPONDENT

REVEREND GEORGE WANJAU.....4TH RESPONDENT

(SUED ON THEIR OWN BEHALF AND ON BEHALF OF

THE PRESBYTERIAN CHURCH OF EAST AFRICA.....5TH RESPONDENT

WILLIAM MWANGI WAMBUGU.....6TH RESPONDENT

AMON NDERI.....7TH RESPONDENT

(SUED ON THEIR OWN BEHALF AND ON BEHALF

OF P.C.E.A. KIKUYU HOSPITAL.....8TH RESPONDENT

THE REGISTERED TRUSTEES OF THE PRESBYTERIAN

CHURCH OF EAST AFRICA.....9TH RESPONDENT

THE PRESBYTERIAN FOUNDATION.....10TH RESPONDENT

RULING

1. The 1st to 7th Respondents/Applicants referred the matter to Court under Chamber summons for a Reference from Taxation dated 28th August 2012.
2. Mr. Amuga submitted that the 1st to 7th Respondent’s names were struck out with costs by Kosgey

J. after a preliminary objection was raised and the taxing declined to grant costs as per scale on the claim for Kshs. 9 million plus. He submitted that the refusal by the taxing master to grant costs was erroneous. The award of costs was not indicated to be one that would abide the outcome of the case against the remaining Respondents. Mr. Amuga submitted that the taxing master only allowed the costs related to the preliminary objection under items 15, 16, 17, 18, 19, 33, 34 and 37. He submitted that the Respondents were entitled to the instruction fees to defend the claim, attending Court until the striking of the claim against them. He thus sought the setting aside of the Ruling of the taxing officer and allow costs as drawn to scale.

3. The Claimant/Respondent did not attend in spite of service.
4. I have perused the Bill of Costs as well as the Ruling of the taxing master. The Ruling by Kosgey J on the preliminary objection was to the effect that the preliminary objection was upheld and the suit against the 1st to 7th Respondents struck out with costs.
5. In my view, the costs were for the defence of the claim and were not limited to the preliminary objection. I thus would award costs of Kshs. 250,000/- which is to scale. I however note there is an intended appeal or appeal preferred. The payment of these costs will thus abide the outcome of the Appeal as the sums could be netted off the sums awarded.

Orders accordingly.

Dated and delivered at Nairobi this 9th day of February 2015

Nzioki wa Makau

JUDGE