



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 314 OF 2013

ABRAHAM MUKUNYA

CLAIMANT

v

MEGA SPIN LIMITED

RESPONDENT

RULING

1. On 10 October 2014, this Court delivered judgment and found that the dismissal of the Claimant was unfair. The Court awarded the Claimant a total of Kshs 74,207/- and costs.
2. On 21 October 2014, the Claimant filed his Bill of Costs in the cumulative sum of Kshs 190,929/-.
3. The Bill of Costs was served upon the Respondent and it was fixed for taxation before Hon. MKN Maroro on 3 November 2014. On this particular day, Mr. Ngamate appeared for the Claimant while Mr. Masese appeared for the Respondent. Mr. Masese applied for adjournment on the ground that the Bill had been served on him only about 5 days earlier and he needed to take instructions. He also suggested that the parties could agree on the Bill.
4. Mr. Ngamate did not oppose the application for adjournment and the Court adjourned the taxation with an order that a new date for taxation be taken in the registry.
5. On 6 November 2014, the Claimant appeared in the registry *ex parte* and fixed the taxation for 20 November 2014. The Claimant was directed to serve a hearing notice.
6. On 20 November 2014, the Bill was placed before Hon. Kombo for taxation. Mr. Masese was absent but the Taxing Officer proceeded to tax the Bill. The Taxing Officer allowed the Bill as drawn in the sum of Kshs 190,929/- without giving any detailed reasons.
7. The Claimant commenced execution and warrants of Attachment were issued.
8. On 11 December 2014, the Respondent moved to Court under certificate of urgency seeking *stay of execution, enlargement of time* within which to comply with rule 11(1) of the Advocates Remuneration Order and to *set aside* the Taxing Officers taxation and to order fresh taxation.
9. On the same day, I certified the motion urgent and granted prayer (b) of the application and fixed *inter partes* hearing for 19 December 2014.
10. On 19 December 2014, after hearing the parties *inter partes*, I granted prayer (c) of the motion. The parties were also given time to attempt out of Court settlement but no agreement was forthcoming.
11. Consequent to the grant of prayer (c), the Respondent wrote to the Taxing Master on 16 January 2015 seeking his reasons as to the taxation of certain specified items.
12. The motion was eventually fixed for hearing on 17 February 2015. On this day, Mr. Muthanwa holding brief for Mr. Omondi for the Claimant informed me that Mr. Omondi was before Mshila J and he would be ready to proceed at 10.30am.
13. However, it appeared that Mr. Omondi was not before Mshila J and the instructions given to Mr. Muthanwa by Mr. Omondi's clerk were false.
14. The Court therefore allowed the application to proceed *ex parte*.
15. By the time of hearing this application, the Taxing Master had not given the reasons for the

- taxation as sought by the Respondent on 16 January 2015.
16. Mr. Masese urged prayers (d) and (e).
 17. He submitted that the Taxing Officer did not tax the Bill but allowed it the way it was filed. He gave examples of item 9, which was alleged to be an attendance before Court for mention on 9 December 2013, and for which the Claimant charged Kshs 4,500/- (the record shows both parties were absent); item 12, indicating another attendance on 3 March 2014 for mention for which Kshs 4,500/- was charged (this was attendance in the registry).
 18. Mr. Masese further submitted that the Claimant had billed for service of process at Kshs 4,500/- instead of Kshs 1,000/- based on the distance from where the Respondent is located and not the registry.
 19. He also submitted that disbursements were not supported by receipts.
 20. It is abundantly clear that the Taxing Master allowed the Claimant's Bill of Costs as drawn without even bothering to confirm from the record which was before him on the veracity of the attendances.
 21. The record also does not indicate any proof of the disbursements of Kshs 5,000/- charged for photocopies and sundries.
 22. In my view, the Taxing Officer was in grave error. He did not consider the factors he ought to have considered. The Taxing Officer misapprehended the principles applicable in taxation of Bill of Costs. It is even doubtful whether he exercised his discretion at all. The taxation cannot be allowed to stand.
 23. The Court therefore sets aside the decision of the Taxing Officer.
 24. With the setting aside of the Taxing Officer's decision, the options available to the Court include reassessing the Bill itself or remitting the Bill back for taxation afresh before a different Taxing Master.
 25. Odunga J in Nairobi Misc. Application No. 343 of 2011, *Evans Thiga Gaturu Advocate v Kenya Commercial Bank Ltd* reviewed some of the authorities on references from taxation and cited the Court of Appeal decision in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board*, Civil Appeal No. 220 of 2004 (2005) 1 KLR 528 where there is passage to the effect that if a Judge on a reference finds that the taxing officer has committed an error of principle the general practice is to remit the question of quantum for the decision of the taxing officer....the judge has however a discretion to deal with the matter himself if the justice of the case so requires.
 26. In my view, the appropriate order in the instant case is to order that the Bill of Costs be placed before a different Taxing Officer for taxation.
 27. The application dated 11 December 2014 is thus allowed.
 28. The conduct of the Claimant's counsel herein was less than honourable. Costs of the application are therefore granted to the Respondent

Delivered, dated and signed in Nakuru on this 6th day of March 2015.

Radido Stephen

Judge

Appearances

For Claimant Maritim Omondi & Co. Advocates

For Respondent Mr. Masese, Senior Legal Officer, Federation of Kenya Employers