



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 191 OF 2014

ALLAN KIMUTAI NGEIYWO

CLAIMANT

v

CHASE BANK (KENYA) LIMITED

1ST RESPONDENT

GEORGE NJOROGE

2ND RESPONDENT

RULING

1. Allan Kimutai Ngeiywo (Claimant) sued Chase Bank (Kenya) Ltd (1st Respondent) and George Njoroge (2nd Respondent) on 12 June 2014 and the issue in dispute was stated as *intended unfair and wrongful termination of employment*.
2. The Memorandum of Claim was accompanied with a motion under certificate of urgency.
3. The Respondents were served and they responded to the motion. Ongaya J on 19 June 2014 stayed the Claimant's suspension and the orders were extended severally.
4. On 25 September 2014, the parties entered a consent whose effect was that the Claimant was to resume his duties and the suit be marked as settled with a directive that the parties negotiate the question of costs. The parties did not agree and the Claimant filed a Bill of Costs which was taxed on 2 April 2015.
5. After the taxation, the Claimant moved to execute and this prompted the 1st Respondent to move the Court on 13 April 2015, seeking stay of execution and another application on 17 April 2015 seeking the setting aside of the taxation and that the Bill of Costs be remitted to a different Taxing Officer.
6. Because of economical use of judicial time, the Court directed that the application filed on 17 April 2015 be prosecuted.
7. The Respondents case is straightforward. It is that the Taxing Master misdirected himself in applying Schedule VI A when taxing the instruction fees at Kshs 500,000/- when the matter was not complex and without considering that no Response was filed.
8. The Respondent further faulted the Taxing Master for awarding getting up fees when the Cause was settled before it was fixed for hearing.
9. The Respondent also faulted the Taxing Officer for allowing items 29, 30, 31, 32, 48, 58, 59-60

without the Claimant producing proof.

10. The Claimant on the other hand contended that the Taxing Officer correctly directed himself and that the Claimant prepared for the hearing.

11. The Claimant sought in the Memorandum of Claim an injunctive order, reinstatement, declaration and in the alternative maximum compensation for wrongful/unfair termination of employment.

12. The Respondents did not file a Response on the merits to the substantive suit. All that they filed were responses to the motion application.

13. There was no monetary figure pleaded in the Memorandum of Claim. But assuming that the Claimant had succeeded in his claim for unfair termination, the maximum compensation and 3 months pay in lieu of notice would have come to Kshs 1,866,000/- (based on the gross salary in as indicated in the salary review together with the allowances in the appointment letter and which sum the Taxing Officer adopted).

14. And because no Response was filed Schedule 6 (1)(a) of Legal Notice No. 35 of 2014 was the applicable one.

15. The Taxing Officer stated in his ruling that he had considered the complexity of the matter, intimidation of the Claimant, interest of the parties and importance. He made a finding that the matter was fairly complex and important to the parties. The Taxing Officer allowed instructions fees of Kshs 500,000/-.

16. According to the Schedule, where no Defence is filed, the instruction fee would be Kshs 75,000/- increased by 1.75% on the amount above Kshs 1,000,000/-.

17. A simple arithmetic suggests that the Taxing Officer increased the basic instruction fees six fold.

18. On the face of it, this was manifestly excessive that it beats logic. The amount allowed was even more than the basic instruction fees for defended Causes.

19. In any case, unfair termination of employment/wrongful dismissal of ordinary employees have become the daily staple of the Employment and Labour Relations Court and the jurisprudence is fairly settled, and the instant one did not have signs of any complexity nor did it raise any novel issues.

20. The Court therefore finds that the Taxing Officer misdirected himself and reduces the amount of instruction fees to Kshs 80,000/-.

21. Getting up fees is provided for in Schedule 6(2). The prerequisites to the getting up fees are that there is a denial of liability or issues are joined by the pleadings.

22. However, 6(2)(ii) is explicit that the fee can only be allowed where a case has been confirmed for hearing.

23. I have perused the record. The Respondents did not file a Response denying liability nor can the Court imply that there were issues appropriate for trial when no Response was filed.

24. Further, the record does not indicate that the Cause had been confirmed for hearing.

25. In allowing the getting up fees, the Taxing Officer committed an error of legal principle and the Court disallows the same.

26. The Court has also considered items 29, 30, 31, 32, 48, 58, 59-60 and has not been able to find any evidence produced before the Taxing Officer that the letters were drawn or perused or copies made.

27. Taxing Officers should be alert to these type of particulars and ensure that the claiming party actually carried out the particular activity.

Conclusion and Orders

28. The Court therefore reassesses the instruction fees to Kshs 80,000/-, disallows the fees for getting up and items 29, 30, 31, 32, 48, 58, 59-60.

29. Any proclaimed/attached goods should be released on the Respondents paying the Bill as reassessed together with the auctioneers charges.

30. Each party to bear own costs.

Delivered, dated and signed in Nakuru on this 5th day of June 2015.

Radido Stephen

Judge

Appearances

For Claimant	Mrs. Kirui C.M. instructed by Gordon Ogola, Kipkoech & Co. Advocates
For Respondent	Ms. Kosgey instructed by Mulondo, Oundo, Muriuki & Co. Advocates
Court Assistant	Nixon