



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 UNION.....
CLAIMANT**

VERSUS

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

(Before Hon. Justice Byram Ongaya on Friday 6th November, 2015)

RULING

The court delivered the judgment in the suit on 6.03.2015 dismissing the claimant's suit with costs. The claimant filed a notice of motion on 5.08.2015. The notice of motion was brought under section 12 of the Employment and Labour Relations Court, Section 3A of the Civil Procedure Act and all enabling provisions of the law. The substantive prayers were as follows:

- a) That pending the hearing and determination of the application, a temporary stay of execution be and is hereby issued restraining the respondent from executing the court decree, certificate of taxation and all other consequential orders.
- b) That the honourable court be pleased to set aside the taxation of costs issued herein.
- c) The respondent's bill of costs is taxed afresh and the claimant be granted leave to defend and raise objections to the bill of costs.
- d) That cost of the application is met by the respondent.

The application was based on the supporting affidavit of Boniface M. Kavuvi attached on the application and on the following grounds:

- a) That on 28.07.2015 the respondent instructed Hippo Auctioneers to attach the claimant's moveable assets to recover costs of the suit amounting to Kshs. 451, 039.00.
- b) Prior to the attachment the respondent was completely unaware that costs had been taxed at Kshs. 451, 039.00.
- c) The claimant was not served with the notice on ruling on taxation.
- d) The claimant has never been served with the decree flowing from the judgment delivered on

6.03.2015.

- e) The claimant has not been served with the certificate of taxation.
- f) The respondent never demanded the payment of costs as taxed before execution process was invoked.
- g) The bill of costs was taxed as drawn despite glaring errors on record including that instruction fees of Kshs. 240,000.00 was awarded based on Kshs. 7, 000,000.00 whereas the judgment had no reference to such amount of money; fees for getting up is exaggerated at Kshs. 80,000.00; memorandum of claim was 32 pages but perusal of 99 pages was allowed; service of the claim at Nairobi was billed twice; and no receipts were provided where they were necessary.
- h) The failure to attend the taxation on 29.05.2015 was due to inadvertent mistake by the claimant's representative because the notice to attend taxation was short.

The respondent filed the grounds of opposition on 11.08.2015 stating 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.

Mr. Nyumba for the applicant submitted that the claimant's representative did not attend the taxation on 29.05.2015 following service of the taxation notice on 19.05.2015 because the 10 days were not enough to appear at taxation in view of other scheduled business of the claimant's representative who was to attend court for taxation.

Mr. Wahome Gikonyo Advocate submitted to oppose the application as follows:

- a) The taxation was on 29.05.2015 and the applicant did not file objection to any of the items within 14 days (on or about 12.06.2015) as required in the Advocates (Remuneration) Order, paragraph 11 thereof.
- b) If the applicant was dissatisfied with the taxation, the applicant ought to have by chamber summons referred the matter to the judge as per paragraph 11 of the Order setting out the items the applicant wished to object to with a view of reversing the taxing master's decision.
- c) The notice to tax allowed the applicant ten days for the applicant to attend and which was within the 7 days prescribed in paragraph 72 of the Order.
- d) Paragraph 11 of the Order requiring lodging of objection and then requiring reference to the court by way of a chamber summons had not been complied with.
- e) The application before the court was therefore incompetent. As there was no objection, the jurisdiction of the court had not accrued.
- f) The applicant had failed to show good reasons for failure to attend the taxation proceedings on 29.05.2015.
- g) The application had been filed on 5.08.2015 after inordinate delay that was unexplained and

inexcusable.

Paragraph 11 of the Advocates (Remuneration) Order provides as follows:

“11. (1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days’ notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.”

In the present case, the taxation took place on 29.05.2012 and the taxing master decided thus, **“Bill duly served. No objection to the same. Drawn to scale. Taxed at Kshs. 448, 589.00”** The record does not show that there were orders made for the decision to be conveyed to the applicant who was absent. The applicant appears to have learned about the decision on 28.07.2015 when the auctioneers knocked on its doors with the proclamation papers to execute the decree but which the applicant says has never been extracted.

The court has considered the submissions and the grounds as urged for the parties and makes findings as follows:

1. The applicant failed to give notice of objection to the taxing master’s decision within 14 days of the decision as provided for in subparagraph 11(1) of the Advocates (Remuneration) Order. In the circumstances and as submitted for the respondent, jurisdiction of this court to revisit the taxing master’s decision by way of reference under paragraph 11 of the Order does not begin to accrue.

2. In absence of the objection, the taxing master has not given his reasons for the taxation decision and thus the reference to the judge as envisaged under the paragraph has not accrued.

3. In the opinion of the court, the applicant ought to have moved in accordance with paragraph 11 of the order. The applicant has also failed to show a good reason why it failed to attend the taxation proceedings as notified and would therefore not be entitled to setting aside of the decision by the taxing master.

4. The court has considered the justice of the case. As submitted for the respondent the applicant appears to have failed to comply with paragraph 11 of the order and failed to explain absence at the taxation proceedings. However, in the opinion of the court, that failure did not diminish the applicant’s entitlements under the paragraph. The court has considered the pertinent objections the applicant ought to have stated in its objection to the taxing master. The applicant invoked the inherent jurisdiction of the court. The court has considered the need to enhance good industrial relations between the parties and to accord justice in the matter. It is the opinion of the court that subject to the applicant meeting the costs of the present application, the parties’ cordial relationship will be enhanced if the requirements of paragraph 11 of the Advocates (Remuneration) Order are activated towards facilitating opportunity for the parties to ventilate the kind of objections the

applicant wishes to get addressed.

5. In the circumstances of the application, the court has considered the envisioned power to extent time under subparagraph 11(4) of the Order and in exercise of the inherent powers of the court and in the best interest of justice and cordial industrial relations between the parties, the time for filing the objection to the taxing master's decision under subparagraph 11(1) the Advocates (Remuneration) Order is 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 provisions of paragraph 11 of the Order as may be necessary.

6. The court finds that it will be in the interest of justice that there is 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 now as extended by the court.

While making the foregoing findings, the court has been guided that under Article 159(2) (b) of the Constitution, justice shall be administered without undue regard to procedural technicalities. The court has further considered that it would save judicial time if extension of time is allowed as found without the applicant having to go back and move the court in that regard. In any event, the court has considered that the parties are in the recognition and collective agreements so that parties are encouraged to foster good and amicable industrial relations including being given a chance to compromise the matters in dispute.

In conclusion the applicant's notice of motion filed on 5.08.2015 is determined with orders 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.

Signed, dated and delivered in court at Nyeri this Friday, 6th November, 2015.

BYRAM ONGAYA

JUDGE