



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 509 OF 2012**

**EDGAR NDEMO MOMANYI ..... CLAIMANT**

**VERSUS**

**CATERING & TOURISM DEVELOPMENT LEVY TRUSTEES ..... RESPONDENT**

**RULING**

The case herein was filed by the Claimant seeking among other orders, payment of Kshs. 29,793,159/- and re-instatement. Judgment was delivered on 26<sup>th</sup> September 2013 re-instating the Claimant to his former employment. The court further ordered the Respondent to pay the Claimant's costs of the suit.

The Claimant thereafter filed a bill of costs on 25<sup>th</sup> November 2013. The bill was taxed by the Deputy Registrar in the sum of Kshs. 694,826.99.

The Claimant's advocates proceeded to prepare the decree and to execute the same.

The Respondent/Applicant was not satisfied with the taxation and filed the present application seeking the following orders:-

1. That for reasons to be recorded the instant application be certified urgent and be heard *ex parte* in the first instance for purposes of prayers 2 hereof;
2. That a stay of execution be issued against execution of the decree herein for costs taxed herein on or about 7<sup>th</sup> March 2014 and staying consequential proceedings of execution thereon pending hearing of the application interpartes;
3. That the Honourable Court be pleased to enlarge time within which the Respondent has to object to the Taxing Officer's decision taxing the Plaintiff's Party and Party Bill of Costs herein and the Reference herein be deemed to have been filed in time;
4. That the Honourable Court be pleased to set aside the Taxing Officer's decision delivered on 7<sup>th</sup> March 2014 as it relates to the reasoning and determination of item No. 1 and 27(b) of this Party and Party 21<sup>st</sup> November 2013;
5. That this Honourable Court be pleased to re-submit the Party and Party Bill of costs dated 21<sup>st</sup> November 2013 for taxation before the Taxing Officer;
6. That the costs of this application be provided for.

The application is supported by the affidavit of Miller Wanjala Bwire, advocate.

The application was urged before me on 5<sup>th</sup> June 2014. Mr. Bwire appearing for the applicant urged me

to find that the subject matter in this case is the amount payable to the Claimant from the date of termination to the date of re-instatement which is Kshs. 2,571,970.80 for which the instructions fees payable under Schedule VI of the Advocates (Remuneration) Order would be Kshs. 100,580 with a getting up fee of Kshs. 33,627/-.

He further urged the court to find that the Deputy Registrar erred in adopting the sum claimed by the Claimant of Kshs. 29,793,159 as the subject matter of the case. He urged me to set aside the Certificate of Taxation and order that the Respondent pays Shs. 134,537/- on the two items of the bill of costs.

Mr. Masese for the Claimant (Respondent in the application) filed his replying affidavit sworn on 30<sup>th</sup> May 2014 in reply to the application. He opposed the application on the grounds that the same has been brought in bad faith. That the Applicant filed a notice of objection which was addressed by the Court and that the grounds in the application have already been dealt with by the Registrar. He further submitted that no application has been made to enlarge the time for making the application. Further he submitted that the applicant is in the habit of disobeying court orders and is therefore not deserving of the orders sought, that the Respondent had already offered to pay the sum and asked the Claimant's advocates to submit to them their bank particulars for purposes of payment and further that the Respondents movable assets had already been proclaimed by auctioneers on 30<sup>th</sup> April 2014.

On the value of the subject matter in this case Mr. Masese submitted that the Respondent did not dispute the amount claimed in the Memorandum of claim in the sum of Kshs. 29,973,159/-, that no sum was mentioned in the judgment and the Deputy Registrar was right in adopting the sum claimed by the Claimant.

From the arguments by the parties, the only issue I have to address is the value of the subject matter herein for purposes of taxation.

The court ordered re-instalment of the Claimant to his former position and for him to be treated as if he never left employment. What then is the monetary value of the court's order for purposes of taxation?

I do not agree with the ruling of the Deputy Registrar that the subject matter is the amount prayed for in the Claim as that amount was not granted by the court.

The meaning of re-instatement is that the Claimant got back his job with effect from the date he was terminated to the date he will leave employment. This means he got back his salary together with all the benefits attached to such salary to the date he will leave employment with all benefits that go with it. Unfortunately, such date is not determinable as it is something to happen in the future. This court has stated in several decisions that the court cannot base its decisions on speculative income.

For now therefore, the only ascertainable figure is the salary arrears payable to the Claimant from the date of dismissal to the date of re-installment. This sum as submitted by the applicant, is Kshs. 2,571,970.80. The Claimant has not contested the figure.

I therefore return this matter back to the Deputy Registrar to tax the instructions fee and the getting up fees based on salary arrears payable to the Claimant between the date of dismissal and the date of re-instatement in the sum of Kshs. 2,571,970.80.

Orders accordingly.

Read and delivered in open Court this 20<sup>th</sup> day of June, 2014

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

In the presence of:

Ms. Njenga for Applicant/Respondent

No appearance for Claimant