



**Wells Fargo Limited v Karanja & others (Miscellaneous Application
E078, E079, E080, E081, E082, E083, E084, E085 & E086 of 2024
(Consolidated)) [2024] KEELRC 13254 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13254 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E078, E079, E080, E081,
E082, E083, E084, E085 & E086 OF 2024 (CONSOLIDATED)**

L NDOLO, J

NOVEMBER 28, 2024

BETWEEN

WELLS FARGO LIMITED APPLICANT

AND

SYMON MIGWI KARANJA & OTHERS RESPONDENT

RULING

1. This ruling determines the Applicant’s consolidated application filed as Miscellaneous Applications No E078, E079, E080, E081, E082, E083, E084, E085 and E086 of 2024.
2. The application, brought by way of Chamber Summons dated 1st March 2024, seeks the following orders:
 - a. That the ruling delivered by Hon D.O Mbeja on 16th February 2024, be set aside and the Bill of Costs dated 2nd October 2018 be remitted for fresh taxation;
 - b. In the alternative, that this Court be pleased to set aside the findings of the Taxing Master and tax the following items in the Bill of Costs thus:
 - i. Item 1 relating to instruction fees be taxed at Kshs. 13,154.23 being the apportionment of instruction fees awardable on the consolidated judgment delivered in Cause No 388 of 2014, consolidated with Causes No 379, 380, 381, 382, 383, 384, 385, 386, 387, 389, 390 & 535 of 2014;
 - ii. Item 2 on getting up fees be taxed at Kshs. 4,384 being the apportionment of getting up fees awardable in the consolidated judgment delivered in Cause No 388 of 2014,



consolidated with Causes No 379, 380, 381, 382, 383, 384, 385, 386, 387, 389, 390 & 535 of 2014.

3. The application is supported by an affidavit sworn by the Applicant's Counsel, Henry Omino, and is based on the following grounds:
 - a. The 1st Respondent, who is a former employee of the Applicant, was the Claimant in Nairobi ELRC Cause No 388 of 2014;
 - b. The said Cause was consolidated with Causes No 379, 380, 381, 382, 383, 384, 385, 386, 387, 390 and 535 of 2014;
 - c. The Claimants in the consolidated Causes, including the 1st Respondent, each purported to file separate Bills of Costs, seeking separate instruction fees and getting up fees;
 - d. The Taxing Master awarded each of the Claimants in the consolidated Causes, including the 1st Respondent, separate instruction fees and getting up fees;
 - e. This is despite the fact that the Causes were consolidated and a consolidated judgment delivered, a fact acknowledged by the Taxing Master, in his taxation ruling;
 - f. The decision of the Taxing Master to award separate instruction fees in the consolidated matters, instead of taxing and apportioning such fees, is contrary to well settled and binding authorities, which provide that instruction fees in a consolidated matter, should only be taxed once and not separately;
 - g. Similarly, where claims have been consolidated, getting up fees should only be charged once, and the Claimants cannot seek getting up fees separately for each of them;
 - h. Further, the instruction fees sought in the Bill of Costs was taxed pursuant to the provisions of the Advocates (Remuneration) Order, 2014, instead of the scale in the Remuneration Order, 2009;
 - i. The instruction fees and getting up fees as assessed by the Taxing Master are illegal and unconscionable and it is therefore in the interest of justice that the certificate of costs be set aside;
 - j. It is in the interest of justice that the Court grants the orders sought in the Chamber Summons.
4. The Respondents oppose the application by a replying affidavit sworn by their Counsel, Kisiang'ani Eddah on 22nd May 2024.
5. Counsel terms the application as incompetent, fatally defective and devoid of any merit. She concedes that the matter under reference was consolidated with 12 other matters but states that the judgment arising therefrom was not consolidated.
6. According to Counsel, the claims were severable and the trial court awarded costs separately for each of the primary suits. Counsel therefore supports the path taken by the Taxing Master to tax instruction fees and getting up fees as he did.
7. Regarding the applicable Remuneration Order, Counsel asserts that at the time of filing suit, the Remuneration (Amendment) Order, 2014 was in force.
8. The parties urged their respective positions by way of written submissions. In its submissions dated 22nd July 2024, the Applicant states that Nairobi ELRC Cause No 388 of 2014 was consolidated with Causes No 379, 380, 381, 382, 383, 384, 385, 386, 387, 389, 390 and 535 of 2014.



9. The Applicant submits that the reason for consolidation was the fact that all the consolidated Causes arose from the same event and only one Claimant, Symon Migwi Karanja testified on behalf of all the Claimants. On 20th July 2018, Ongaya J delivered a consolidated judgment, awarding all the Claimants 12 months' salary for unfair termination of employment, in addition to one month's salary in lieu of notice.
10. The Applicant asserts that it is a well settled principle of law that where matters are consolidated, instruction fees is charged only once and apportioned to the Claimants accordingly, based on the value of the judgment. The Applicant therefore faults the Taxing Master for allocating instruction fees to each of the Claimants individually.
11. In advancing its position, the Applicant cites the decision in *Grace Wangui Ngenye v Wilfred Kiboro & another* [2013] eKLR where R.E Ougo J held that costs relating to instruction fees in consolidated suits ought to be apportioned. The learned Judge went further to hold that failure to observe this basic principle would result in unjust enrichment to the winning party.
12. My reading of the pleadings filed by the parties in this reference is that the primary Causes upon which the impugned Bill of Costs was drawn were consolidated and the trial Judge delivered a single judgment, with specific awards in favour of each Claimant. The nature of the contested items being, instruction fees and getting up fees is instructive.
13. In his decision in *Warutere & Associates v Robert Kang'ethe Baar & others* [2018] eKLR Nzioki wa Makau J, restated the applicable principle in taxing these two items where multiple causes have been consolidated as follows:

“...Advocates should avoid filing multiple suits where the cause of action is joint and the relief is generally the same and only consolidate them for hearing so as to obtain separate instruction fees on taxation. This is a practice that should be deprecated as it enhances the possibility of making access to justice expensive and a preserve of the rich. I decline the invitation to interfere with the Taxing Officer's decision to apportion instruction fees as she did holding that the costs of consolidated suits should be apportioned and the awarding of instruction fees for each individual suit would amount to unjust enrichment. I concur with her reasoning and uphold it as a sound exposition and application of the law on costs in consolidated suits.”
14. The foregoing statement of the law on costs arising from consolidated matters, was affirmed in the subsequent decision in *James Nyangiye & others v Attorney General* [2020] eKLR.
15. The same fate befalls the item on getting up fees. In the *Grace Wangui Ngenye Case*, it was held that after consolidation, Counsel prepared for one suit and could not therefore charge multiple times for this item.
16. Bearing in mind the purpose of an award in costs being, due compensation for expended effort, I am persuaded by and agree with the foregoing jurisprudence.
17. In the result, I find and hold that the Taxing Master fell into error by deconsolidating taxation on the items on instruction fees and getting up fees.
18. On the issue of the applicable Remuneration Order however, I take the view that the determinant factor was the date of filing of the Bill of Costs and not the date when instructions were issued. In the result, I agree with the Taxing Master that the applicable instrument was the Remuneration Order, 2014.



19. Finally, the ruling delivered by Hon D.O Mbeja on 16th February 2024 is set aside and the Bill of Costs dated 2nd October 2018 is remitted for re-taxation before another Taxing Master, other than Hon D.O Mbeja.

20. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF NOVEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Omino for the Applicants

Ms. Kisiang'ani for the Respondent

