



REPUBLIC OF KENYA



Miyare t/a Miyare Advocates v Munge & 2 others (Miscellaneous Cause E090 of 2022) [2024] KEHC 16686 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CAUSE E090 OF 2022
DO CHEPKWONY, J
DECEMBER 20, 2024**

BETWEEN

GEORGE MIYARE T/A MIYARE ADVOCATES ADVOCATE

AND

JANE WAIRIMU MUNGE 1ST CLIENT

ANDREW MAINA MAINA 2ND CLIENT

DEBBIE KARUGI MAINA 3RD CLIENT

RULING

1. This ruling pertains the Clients/Applicants' Notice of Motion application dated 2nd May, 2024. The application is brought under the provisions of Sections 3 and 3A of the *Civil Procedure Act*, Order 45, both and Order 51, both of the *Civil Procedure Rules*, as well as Article 159 of the *Constitution of Kenya*, 2010 seeking several orders, specifically:-
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to review, vary and/or modify the ruling delivered on the 12th April, 2024 to the extend that an extension of time is granted to the Clients/Applicants to comply with the orders therein.
 - d. That this Honourable court be pleased to make such further orders as it may deem fit.
 - e. The Costs of this application be provided for.
2. The Applicants case, as gleaned from the grounds set forth on the face of the application and the supporting affidavit sworn by Irene W. Kiarie, is that their earlier application, dated 23rd January 2024 seeking to set aside the taxation of the Advocate-Client Bill of Costs, had been scheduled for a ruling



on 14th March, 2024. However, the ruling was not delivered on the said date due to the Honourable Judge's indisposition. Subsequently, through the judiciary's e-filing platform, the Applicants were notified that the matter would be mentioned on 2nd May, 2024. To their utter surprise, they were shortly thereafter, they were served with a notice of appeal against a ruling that had allegedly been delivered on 12th April, 2024, unbeknownst to them, in respect of their application dated 23rd January, 2024.

3. The Applicants aver that upon finally obtaining the ruling, they established that it had directed them to adduce new evidence within three (3) days of the date of the ruling. However, this period had already lapsed by the time they became aware of the ruling. According to the Applicants, they had not been served with a ruling notice for 12th April, 2024, and as such, they were completely unaware of its delivery. They argue that they cannot be faulted for failing to comply with the court's directives and timelines when they were not properly notified of the ruling date.
4. To further demonstrate diligence, the Applicants explain that upon learning of the delivery of the ruling, they promptly wrote to the Deputy Registrar via a letter dated 19th April, 2024 requesting for a copy of the ruling. However, the said ruling was not availed to them in good time and for these reasons, the Applicants assert that sufficient cause exists for this Honourable Court to exercise its discretion in their favor by reviewing the ruling and extending the timelines for compliance.
5. On the other hand, the Advocate/Respondent opposed the application through a replying affidavit sworn on 5th July, 2024. The Advocate/Respondent gives a detailed history of the matter, stating that he had filed a Bill of Costs dated 13th May, 2022, which was subsequently heard and taxed by the taxing master at Kshs.6,307,944.40 in a ruling delivered on 17th March, 2023. Following this, a certificate of costs was issued on 27th March, 2023.
6. The Advocate/Respondent avers that instead of settling the taxed costs, the Clients/Applicants filed a Chamber Summons application dated 24th March, 2023, contesting the taxed amount on the ground that the taxing master erred in assessing the instruction fees. Conversely, the Advocate/Respondent responded by filing an application dated 5th April, 2023 seeking to have the certificate of costs adopted as a judgment of the court. The court subsequently directed that the two applications be canvassed by way of written submissions.
7. The Advocate/Respondent further states that on 23rd January, 2024, the Clients/Applicants filed yet another application, seeking to introduce additional evidence in the form of a summary valuation report dated 15th December, 2023. This application was allowed in the ruling delivered on 12th April, 2024. According to the Advocate/Respondent, the ruling contained a self-executing order, which automatically lapsed upon the expiry of the timelines provided therein.
8. The Advocate/Respondent contends the present application is untenable, as it is omnibus in nature and raises no viable grounds for review. The Advocate/Respondent argues that the Applicants have failed to offer any reasonable explanation for their failure to comply with the court's orders and timelines, and as such, they must bear the consequences of their own inaction.
9. Furthermore, the Advocate/Respondent accuses the Applicants of acting in bad faith, pointing out that in a cross-petition to the succession cause, the Applicants had previously declared the value of the estate in question to be approximately Kshs.1,000,000,000.00. He submits that the summary valuation report sought to be introduced as new evidence deliberately undervalues the estate and omits certain properties with the aim of depriving the Advocate/Respondent of his rightful and legally earned fees.
10. The application was canvassed by way of written submissions, which were subsequently highlighted before court on 29th October, 2024 by counsel for both parties. I have carefully considered both



written and oral submissions advanced by the respective counsel, and while I do not intend to reproduce them verbatim, I shall incorporate them in the analysis of the issues raised herein.

Analysis and Determination

11. Having carefully considered the application before court and read through the Supporting Affidavit sworn by Irene W. Kiarie, the Replying Affidavit sworn by the Advocate/Respondent, and the respective submissions made by both parties, I find the key issue for determination in this application is whether this court should exercise its discretion to review the ruling delivered on 12th April, 2024 and extend the time for the Clients/Applicants to comply with the orders therein.
12. However, in view of the submissions made by the Advocate/Respondent, it must be emphasized at the outset, that the court is not tasked with determining the authenticity or merits of the valuation report sought to be introduced, nor is it required to delve into the broader history of the matter or the dispute over taxation of costs. Those issues are beyond the scope of this application and will remain matters for determination at the appropriate stage.
13. The application before this court is brought under Order 45 Rule 1 of the [Civil Procedure Rules, 2010](#), which provides as follows:
 - “ Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”
14. Order 45(1) above restricts the grounds for review to discovery of new and important evidence, mistake or error apparent on the record, or other sufficient reasons and whatever the ground, there is a requirement that the application has to be made without unreasonable delay.
15. In this case, the Applicants have relied on the grounds of “sufficient reason” for the court to review its orders and extend the time within which they were required to comply. Their main contention is that they were not aware of the delivery of the ruling on 12th April 2024 and, therefore, could not comply with the timelines set therein. This, they submit, was due to the failure to serve them with a ruling notice. They argue that upon establishing that the ruling had been delivered, they acted promptly by writing to the Deputy Registrar on 19th April, 2024 requesting for a copy of the ruling, but the same was not availed to them in time.
16. In determining whether sufficient cause has been demonstrated, the court must exercise its discretion judiciously and in accordance with the established legal principles. In the present case, the Applicants have stated that they were not served with a ruling notice and, as a result, were unaware of the delivery of the ruling on 12th April, 2024.



17. It is this Court’s considered view, established court practices require parties to be duly notified of rulings or judgments. Failure to provide such notification, deprives parties of the opportunity to comply with court directives and or orders, thereby prejudicing their right to a fair hearing.
18. Having carefully examined the court record in this matter, it is evident that the ruling dated 12th April, 2024 was delivered in the absence of the Applicants and only in the presence of the Advocate/ Respondent. The court had previously deferred the delivery of the ruling, and there is no clear evidence on record to confirm whether the Client/Applicants or their advocates were made aware of the new ruling date.
19. The absence of a ruling notice served upon the Applicants, whether by the court or the Advocate/ Respondent, raises a reasonable doubt as to their knowledge of the ruling. This is especially significant given that the court had earlier directed that the ruling would be delivered on notice. It is, therefore, incumbent upon the Respondent or the court to demonstrate, through evidence of service, that the Applicants were notified of the ruling date. In the absence of such proof, the Applicants cannot be faulted for failing to comply with the directives issued in the ruling.
20. In the case of *Pithon Waweru Maina v Thuku Mugiria* [1983] eKLR, the court reiterated that the discretion to review or vary court orders must be exercised where “justice demands” and to avoid hardship resulting from technical or procedural lapses. Thus, in this court’s view, the Applicants’ assertion that they were not notified of the ruling date constitutes a plausible ground for the exercise of discretion in their favor. This Court agrees that the delay occasioned by their lack of knowledge of the delivery of ruling cannot be attributed to negligence or unwillingness to comply.
21. It must also be added that the essence of extending court timelines is to ensure that parties are not shut out from pursuing their claims or defenses due to circumstances beyond their control. This principle aligns with Article 159(2)(d) of the *Constitution of Kenya*, 2010, which provides that:

“Justice shall be administered without undue regard to procedural technicalities.”
22. In the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Others* [2013] eKLR, the Supreme Court set out the considerations for extending time, stating that:-

“Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court... The party who seeks for extension of time must explain the reasons for delay to the satisfaction of the court.”
23. In the present case, the Applicants acted promptly upon discovering that the ruling had been delivered. Moreover, the lapse in timelines was occasioned not by their own fault but by the lack of notification. As such, this court finds that the Applicants have sufficiently explained the delay and provided a reasonable basis for seeking the extension of time. It is trite that Courts retain the discretion to extend such timelines where sufficient cause has been demonstrated and being guided by the decision in the case of *Kenya Power & Lighting Co. Ltd v Rose Anyango & Another* [2016] eKLR, this Court reiterates that strict timelines imposed by court orders are not meant to defeat the ends of justice but rather to ensure expeditious disposal of matters. Therefore, it cannot be said that the ruling issued by this court was self-executory and beyond extension.
24. In conclusion, this court finds that the Applicants have demonstrated sufficient cause to warrant the exercise of discretion in their favor. The delay in complying with the ruling delivered on 12th April, 2024 was occasioned by circumstances beyond their control, specifically the lack of a ruling notice. Accordingly, this Court makes the following orders: -



- a. The ruling delivered on 12th April, 2024 is hereby reviewed to the extent that the time for compliance with the orders therein is extended by a further seven (7) days from the date of this ruling.
- b. The Applicants to ensure strict compliance with the extended timelines, failure to which the orders issued herein shall automatically lapse.
- c. Costs of this application shall be in the cause.
- d. Mention on 21st January, 2025.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20TH DAY OF DECEMBER, 2024.

D. O. CHEPKWONY

JUDGE

