



Mwaniki Gitau & Co. Advocate v Njeri & another; Muchiri (Administrator of the Estate of Geoffrey Muchiri Kamau) (Interested Party) (Miscellaneous Case 43 of 2017) [2023] KEHC 3291 (KLR) (Family) (19 January 2023) (Ruling)

Neutral citation: [2023] KEHC 3291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CASE 43 OF 2017
EKO OGOLA, J
JANUARY 19, 2023**

BETWEEN

MWANIKI GITAU & CO. ADVOCATE APPLICANT

AND

ANN NJERI 1ST RESPONDENT

EUNICE WANJIKU MUCHIRI 2ND RESPONDENT

AND

MARGARET NJOKI MUCHIRI (THE ADMINISTRATOR OF THE ESTATE OF GEOFFREY MUCHIRI KAMAU) INTERESTED PARTY

RULING

1. The Application before the Court is dated 21st October 2021 by the Interested party who prays for enlargement of time within which to file a Reference to set aside the Ruling of the Taxing Master delivered on 27th April 2018. The Application is based on the grounds set out therein and the Supporting Affidavit of Margaret Njoki Muchiri.
2. It is averred that the Advocate/Client Bill of Costs was taxed in favour of the Applicant against the Respondents at a sum of Kshs. 729,203/=. This amount was to be offset from the estate of Geoffrey Muchiri. The Interested party was not party to the aforesaid taxation and only came to learn of the Ruling after Auctioneers were instructed to proclaim her movable properties. The Interested party filed a Review of the Ruling which was dismissed on 29th September 2021 on the ground that the Taxing Master lacked jurisdiction.



3. The Respondents opposed the Application vide Grounds of opposition. They averred that the Application has been caught up by the laches doctrine since it was made four years after the Ruling. They stated that the Interested party had all along been represented by counsel and this is just a delaying tactic.

Determination

4. I have carefully considered the pleadings filed. The main issue for determination is whether the Interested party is entitled to the orders for the enlargement of time within which to file a notice of objection.

5. Paragraph 11 of the *Advocates Remuneration Order* provides as follows;

- “ 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 subsection (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.”

6. The Interested party alleges that the delay was occasioned by the fact that she was unaware of the Taxation proceedings. The Court in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR laid out the general principle of extension of time.

“... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

- i. 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;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;



- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
7. On the issue of delay, Mohammed J. (as he then was) held as follows in [George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others](#) [2014] eKLR:-
- “The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”
8. The same position was taken in [Stanley Kaboro Mwangi & 2 Others v Kanyamwi Trading Company Limited](#) [2015] eKLR where the court was of the view that: -
- “A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercised.”
9. The common thread that runs through the above-cited decisions is that the court is clothed with the discretion of allowing an application for an extension of time where the applicant demonstrates that there was sufficient cause for the delay. In the instant case, the only reason for the delay is that the Interested party was unaware of the Taxation proceedings, and after acquiring the knowledge, she opted, through her counsel to make an Application for Review. This is not sufficient reason to explain three years of indolence. I find that the Interested party is not entitled to the discretionary orders for the extension of time.
10. The Application dated 21st October 2021 is hereby dismissed with costs to the Interested Party.
- It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JANUARY 2023

E.K. OGOLA

JUDGE

In the presence of:

N/A for the Applicant

N/A for the Respondents

Ms. Nyakiano for the Interested Party

Gisiele Muthoni Court Assistant.

E.K. OGOLA J. Page 3 of 3

