



**Mugambi & another v Wangai (Civil Appeal 597 of 2012)  
[2023] KEHC 1202 (KLR) (Civ) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1202 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 597 OF 2012**

**JK SERGON, J**

**FEBRUARY 23, 2023**

**BETWEEN**

**JOHN N. MUGAMBI ..... 1<sup>ST</sup> APPLICANT**

**MUGAMBI & COMPANY ADVOCATES ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KIAMA WANGAI ..... RESPONDENT**

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> applicants herein have filed the Chamber Summons dated 12<sup>th</sup> October, 2022. The Summons is supported by the grounds set out on its face and the facts stated in the affidavit of the 1<sup>st</sup> applicant and sought for the following orders:
  - i. Spent.
  - ii. Spent.
  - iii. That this Honourable Court be pleased to grant leave and enlarge the time within which to file a Reference against the decision of the taxing master delivered on 31<sup>st</sup> May, 2018.
  - iv. That this Honourable Court be pleased to grant an order for stay of execution arising out of the ruling delivered on the 31<sup>st</sup> May, 2018 and the resultant Certificate of Costs dated 7<sup>th</sup> June, 2018 pending the hearing and determination of the Reference.
  - v. That the costs of the application be provided for.
2. The respondent put in the Grounds of Opposition dated 14<sup>th</sup> November, 2022 to resist the Summons and raising the following grounds:



- a. That the application dated 12<sup>th</sup> October, 2022 is res judicata, it raises issues that were canvassed and dismissed by the court on 8<sup>th</sup> July, 2022.
  - b. That the ruling delivered by the court on 8<sup>th</sup> July, 2022 did not direct the filing of a reference or if at all.
  - c. That the application to seek leave to file a reference is an afterthought, after the ruling by this Honourable Court on 8<sup>th</sup> July, 2022.
  - d. That the delay if at all in filing the application for enlargement of time cannot be reasonably excused, the same is over 4 years, it's inordinate.
  - e. That the application seeks to file a reference for a ruling of the taxing master, that has partially been complied with.
3. At the interparties hearing of the Summons, the parties urged this court to consider the material on record.
  4. I have therefore considered the grounds set out on the body of the Summons; the facts deponed to in the affidavit filed in support thereof; and the Grounds of Opposition.
  5. Before I consider the merits of the Summons, I consider it necessary to address my mind on a key issue which was raised by the respondent in the Grounds of Opposition; namely on whether the Summons is res judicata by virtue of the ruling delivered by this court on 8<sup>th</sup> July, 2022.
  6. Upon my study of the record, it is apparent that upon the dismissal of the applicant's appeal with costs to the respondent, the latter filed the Party and Party Bill of Costs dated 12<sup>th</sup> October, 2017 and which was taxed by the taxing master on 31<sup>st</sup> May, 2018 in the sum of Kshs.94,425/= thereby resulting in the Certificate of Taxation dated 7<sup>th</sup> June, 2018.
  7. It is also apparent from the record that subsequently, the applicants filed the Notice of Motion dated 21<sup>st</sup> January, 2022 and sought for various orders arising out of the taxed Bill of Costs.
  8. From my study of the aforementioned ruling, I note that this court did not consider the merits of the Motion on the grounds that the applicants had not followed the proper procedure for filing a Reference to challenge the taxation proceedings and I therefore dismissed the said Motion with costs.
  9. In view of all the foregoing circumstances, I see no reason to find that the instant Summons is res judicata. Consequently, this line of argument laid out in the Grounds of Opposition fails.
  10. Returning to the merits of the Summons, it is clear that the orders sought therein are two-fold.
  11. The first order is for extension/enlargement of time for filing the Reference.
  12. The applicants on their part state that the delay in filing the Reference in good time was occasioned by the fact that the parties were engaged in a series of applications arising out of the execution of the Certificate of Costs thereby resulting in the aforementioned ruling delivered on 8<sup>th</sup> July, 2022 and which is an indication that there was no indolence on the part of the applicants.
  13. The applicants also state that no prejudice will be visited upon the respondent if the time for filing a Reference is enlarged.
  14. The respondent on his part argues that there has been an inordinate delay in bringing the application and in filing a Reference. On that basis, the respondent urges this court to dismiss the Summons.



15. Paragraph 11 of the Advocates Remuneration Order provides for the procedure for objecting to a decision on taxation and on the filing of a Reference, as seen hereunder:
- “(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), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
  - (5) 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.”
16. From the foregoing, it is clear that the courts have discretion to enlarge the time for the performance of any action under the above paragraph.
17. Upon my perusal of the record, it is clear that there has been a prolonged delay in bringing the application and/or in filing a Reference since the time of delivery of the ruling on taxation.
18. Suffice it to say that, upon my consideration of the explanation given by the applicants for the delay and which explanation is supported by the record, I am satisfied that the same is reasonable in the circumstances.
19. In view of all the foregoing circumstances therefore and in the absence of anything to indicate the prejudice that will befall the respondent, I will exercise my discretion in favour of the applicants.
20. The second order sought is for a stay of execution of the ruling on taxation, pending the hearing and determination of the Reference.
21. To support the above order sought, the applicants state that unless a stay of execution is granted, the respondent will likely move to execute the second Certificate of Taxation arising out of the ruling on taxation, thereby rendering the intended Reference nugatory.
22. In reply, the respondent argues that the ruling on taxation has partially been complied with.
23. From my study of the record, it is apparent that the taxation proceedings gave rise to two (2) separate Certificates of taxation and which forms the crux of the applicants’ intended Reference.



24. From my further study of the record, it is apparent that the applicants have settled the amount indicated in one of the Certificates of Taxation but that they are disputing the validity of the second Certificate of Taxation bearing a similar amount.
25. Upon my consideration of the foregoing circumstances, I am satisfied that the applicants have reasonably demonstrated the manner in which they stand to suffer substantial loss in the event that an order for a stay of execution is denied.
26. The upshot therefore is that the Chamber Summons dated 12<sup>th</sup> October, 2022 is hereby allowed thus giving rise to issuance of the following orders:
  - i. Leave be and is hereby granted to the applicants to file a Reference against the decision of the taxing officer delivered on 31<sup>st</sup> May, 2018 out of time within 14 days from the date of this ruling.
  - ii. There be an order for a stay of execution of the ruling and order delivered on the 31<sup>st</sup> May, 2018 and the resultant Certificate of Costs dated 7<sup>th</sup> June, 2018 pending the hearing and determination of the Reference on the condition that the applicants deposits the amount indicated in the Certificate of Taxation in court within 45 days from this day, failing which the order for a stay shall lapse.
  - iii. Costs of the Chamber Summons shall abide the outcome of the Reference.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2023.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the 1<sup>st</sup> and 2<sup>nd</sup> Applicants

..... for the Respondent

