



Makecha & Gitonga Advocates v Standard Group PLC (Civil Miscellaneous Application 794 of 2019) [2023] KEHC 18406 (KLR) (Civ) (29 May 2023) (Ruling)

Neutral citation: [2023] KEHC 18406 (KLR)

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

CIVIL

CIVIL MISCELLANEOUS APPLICATION 794 OF 2019

AN ONGERI, J

MAY 29, 2023

BETWEEN

MAKECHA & GITONGA ADVOCATES APPLICANT

AND

THE STANDARD GROUP PLC RESPONDENT

RULING

- 1) The application coming for consideration in this ruling is the one dated 17/11/2021 seeking enlargement of time to file a reference against taxation of the Bill of costs dated 26/8/2021.
- 2) It is based on the grounds that the Taxing Master erred and misdirected himself in finding that the prayers in the plaint were non-monetary and that it was not possible to ascertain the value of the subject matter.
- 3) Further, that the Taxing Master failed to apply the correct principle while taxing the Bill of Costs and taxed off getting up fees and awarded costs that are manifestly low as to cause injustice to the applicant.
- 4) The application is supported by the affidavit of James Gathuri in which it is deposed that the taxing master erred in law, principle and facts while taxing the instruction fee by stating that the prayers sought in the Plaint are non-monetary in nature and the value of the subject matter cannot therefore be ascertained from the pleadings.
- 5) That the defendant's advocate in HCC no 393 of 2015 complied with Order 11 and the matter was certified ready for hearing and was granted a hearing date for 2/10/2019. The taxing master failed to allow getting up fees despite the matter being set for hearing on 2/10/2019
- 6) The respondent filed its grounds of opposition dated 24/2/2022 on the following grounds;



- a) The Applicant moved to convert the Certificate of Costs *vide* the Application dated 23rd September 2021 which was allowed on 18th November 2021 adopting the Certificate of Costs as a Decree of this Court.
 - b) The Applicant is not deserving of enlargement of time to bring a reference against the decision of the Honourable Taxing Master dated and delivered on 19th August 2021 as the same has already been adopted.
 - c) There is no sufficient cause to warrant the exercise of judicial discretion for enlarging time in favour of the Applicant.
 - d) Without prejudice to the above, the decision of the Taxing Master was sound in principle and should not be disturbed. In any event, the applicant has not demonstrated any error on the part of the Taxing Officer.
 - e) The Application is therefore vexatious, frivolous and an abuse of the Court process and ought to be dismissed with costs.
- 7) The parties filed written submissions which I have duly considered. The applicant in his submissions argued that the prayers sought in the plaint included damages for libel that are monetary in nature and therefore the value of the subject matter can be ascertained. That Section 16A of the [Defamation Act](#) Cap 36 Laws of Kenya provides;
- “In any action for libel, the court shall assess the amount of damages payable in such amount as it may deem just:
- Provided that where the libel is in respect of an offence punishable by death the amount assessed shall not be less than one million shillings, and where the libel is in respect of an offence punishable by imprisonment for a term of not less than three years the amount assessed shall not be less than four hundred thousand shillings.
- 8) It was submitted that the Taxing master erred in principle and in law by finding that it is not possible to ascertain the value of the subject matter from the said prayers in the pleadings. The taxing master in determining the instruction fees used Schedule 6 (a) (1) of the [Advocates Remuneration Order](#) under “other matters” instead of Schedule 6A (1) (b) and should therefore be varied as it is based on an error of principle of law.
 - 9) The sole issues for determination in this Application is whether time should be enlarged for filing a reference.
 - 10) On the said issue as to whether time for filing the reference should be enlarged, I find that the court has a discretion to enlarge time for filing a reference.
 - 11) The discretion of this court to enlarge time is elaborately discussed in the case of the *County Executive of Kisumu v County Government of Kisumu and 8 Others* [2017] eKLR where the Supreme Court of Kenya held thus:
 - “(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as



“the under-lying principles that a Court should consider in exercise of such discretion:

1. 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;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

12) I allow expansion of time accordingly and direct that the reference be filed within 30 days of this date.

13) The costs of this Application to abide the reference.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 29TH DAY OF MAY, 2023.

.....

A. ONGERI
JUDGE

In the presence of:

..... for the Applicant/Advocate

..... for the Respondent/Client

