



**Pereruan v Chepkorir (Miscellaneous Application 141 of 2019)
[2023] KEHC 21207 (KLR) (7 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21207 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION 141 OF 2019
RN NYAKUNDI, J
AUGUST 7, 2023
IN THE MATTTTER OF THE ADVOCATES ACT CAP 16 LAWS OF KENYA
AND
IN THE MATTER OF CIVIL SUIT NO.1045 OF 2016
GLADYS PERERUAN
.....PLAINTIFF/APPLICANT
VERSUS
BETTY CHEPKORIR
.....DEFENDANT/RESPONDENT
AND
IN THE MATTER OF THE APPLICATION FOR TAXATION OF PARTY &
PARTY BILL OF COSTS
BETWEEN
GLADYS PERERUAN PLAINTIFF
AND
BETTY CHEPKORIR RESPONDENT**

RULING

1. That the honourable court be and is hereby pleased in the interests of expediency of justice to consider the ruling on the plaintiff's/applicant's party & party bill of costs dated November 29, 2021, dated, signed and delivered via email Eldoret on November 29, 2022, as rendered by R.K Onkoba, Deputy Registrar as reasons for taxation of the plaintiff/applicant's party & party bill of costs pursuant to the



defendant's/respondent's preliminary objection dated September 2, 2020 dated June 29, 2021 and filed in court on July 2, 2021.

2. That the honourable court be and is hereby pleased to enlarge time by (14) days within which the plaintiff/applicant (intended objector) herein may file her reference against the ruling on the plaintiff's/ applicant's party & party bill of costs dated November 29, 2021, dated, signed and delivered via email Eldoret on November 29, 2022, as rendered by R.K Onkoba, Deputy Registrar, on items she intends to object to or in the alternative
3. That the honourable court be and is hereby pleased to enlarge time by (14) days within which the plaintiff/applicant (intended objector) herein may give notice in writing to the taxing officer of the items of taxation to which she objects.
4. That the honourable court be and is hereby pleased to enlarge time by (14) days within which the taxing officer shall forthwith record and forward to the objector (plaintiff/applicant here) the reasons for decision on the items objected to by the objector.
5. That the honourable court be and is hereby pleased to issue any further orders as it deems appropriate in the particular circumstances of this case.
6. That costs of this application be provided for. The application is supported by the affidavit of counsel for the applicant, Ms Badia A. Fiona, sworn on February 14, 2023.

The Applicant's Case

7. The applicant's case is that on July 2, 2021 she filed a party & party bill of costs pursuant to the respondent's preliminary objection dated September 2, 2020. That on November 29, 2022, the matter was scheduled for ruling on the applicant's party & party costs before Hon Rosemary K. Onkoba, the Deputy Registrar. Counsel maintains that on the material date she was logged into the virtual court session and upon making virtual inquiries with the Deputy Registrar upon making inquiries with the Deputy Registrar upon her completion of the High Court Cause list for the day on the status of the aforementioned ruling she was advised to log into the virtual court session at 3:00pm for the said ruling. Counsel further maintains that at 2:45pm in compliance with the court's earlier directive, she was logged into the virtual court session and stayed on until way past 4:30pm without being admitted into the virtual court session.
8. Counsel further deposed that upon sending one of her representative Mr Silas Rabai Mungania to follow up with the court clerk from the said court. He was informed that that counsel had been informed that the said ruling would be delivered via email on the same day which position counsel disputes as not being true. Counsel further contends that at the time of filing this instant application, she was yet to receive any email correspondence from the said court. Counsel further deposed that *vide* a letter dated November 30, 2022, she wrote to the Deputy Registrar, Eldoret High Court seeking to be advised on the status of the pending ruling and requested to be supplied with a duly certified copy of the said ruling if the same had been indeed delivered in the applicant's presence. Counsel further maintains that said letter was sent via courier on December 1, 2022, and was formally lodged in court on December 2, 2022.
9. Counsel contends that it was not until January 31, 2023 at 10:40am that she received via courier the duly filed letter dated November 30, 2022, that she had written to the Deputy Registrar and uncertified copy of the ruling on the applicant's party & party bill of costs dated July 29, 2021 that had been delivered on November 29, 2022, by Hon Rosemary K. Onkoba.



Counsel further deposed that upon interrogating the said ruling, the same had legal irregularities and unproceduralities. That the applicant's party & party bill of costs sought a total sum of Kshs 70,145/=.

10. Counsel maintains that as per the ruling dated November 29, 2022, the only item not taxed as is drawn was Item. 4 which was downscaled to Kshs 1,100/=. Counsel contends that basic arithmetical workings dictate that the difference between Kshs 70,145/= and Kshs 1,100 cannot be Kshs 23,195 as rendered by the Deputy Registrar. Further Counsel is also aggrieved by the manner in which Item 4 of the applicant's party & party bill has been taxed contrary to the provisions of schedule 6 item. 4 (a) (i)(ii) of Legal notice No 35.

Counsel further contends that while her replying affidavit dated September 10, 2020, contained 77 folios, the Deputy Registrar irregularly and unprocedurally taxed the aforementioned item as though it only contained 4 folios yet the pleading is duly filed and contained in the court record. According to counsel, as a result of the Deputy Registrar's unjudicial and injudicious exercise of judicial discretion the applicant has been irregularly and unprocedurally been deprived of Kshs 10,950/= being the difference between Kshs 12,050/= and Kshs 1,100/= on this particular item alone.

11. The applicant intends to challenge the ruling dated November 29, 2022, on two pivotal grounds being the arithmetical workings leading to a sum total of Kshs 23,195/= and taxation of item 4 of the party & party bill of costs dated June 29, 2022.

According to counsel, this duplex and glaring irregularities and unproceduralities call for the intervention by the judge of the High Court and the applicant being granted extension of time within which to file a reference against the aforementioned ruling and upon being granted such extension of time the applicant to not only file the same but to also prosecute the same to its definitive conclusion.

Counsel maintains that while it is evident that she moved with speed to secure the ruling dated November 29, 2022, *vide* her letter dated November 30, 2022, it was not until January 31, 2024, that she received the impugned ruling which was delivered in the absence of all parties to the suit.

12. Counsel deposed that the application herein has been filed timeously and that it is in the interest of justice that this court extends the requisite time lines so as to enable the applicant file the reference for hearing and determination on merit.

The application is unopposed though there is an affidavit of service on record dated February 20, 2023, showing that the respondent was duly serviced.

At the time of writing this ruling none of the parties had filed their respective submissions.

Analysis and Determination.

13. Upon perusing the application, the only issue for determination is;
 - a. Whether this court should enlarge time to enable the applicant file a reference against the ruling of the taxing master out of time.
14. Paragraph 11 of the *Advocates Remuneration Order* (ARO) stipulates as follows on the filing of reference objecting to the decision of the taxing master: -
 - 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 which he objects.
 - 2) The taxing officer shall forthwith record and forward to the objector the reasons or 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) 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 expired." (emphasis supplied).
15. 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.”
16. In case of *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal while referring to other authorities observed; -

The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi v Charles Gichina Mwangi* – civil application No Nai 26 of 2004, this court held; -



“It has been stated time and again that in an application under rule 4 of the rules the learned single judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd* [2003] KLR 486 in which this court stated: -over the years, the court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* – civil application No Nai 255 of 1997(unreported), the court expressed itself thus; -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reasons for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

17. It is clear from the above cases the length of the delay and reasons for non-compliance of the time lines are important factors to influence the exercise of discretion of the court. In calculating the length of delay in making the application for an extension of time the period will start running from November 29, 2022, when the bill of cost was taxed by the taxing master to February 16, 2023 which time the aggrieved applicant lodged the chambers summons for extension of time. The delay in filing the application was on or about an overreach of (79) days. In this instant application the applicant has explained the reason for the delay in meeting the requirements set out in paragraph 11 (1) and (2) of the [Remuneration Order](#) outlined hereinabove. She has also demonstrated through various correspondences, the effort she put in trying to find out if the impugned ruling had been rendered. With that said I am of the view that there is a sufficient cause for this court to extend time in favour of the applicant to file a reference under paragraph 11 (1) (2) of the [Advocates Remuneration Order](#).

In the end, the chambers summons dated February 14, 2023, be and is hereby allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 7TH DAY OF AUGUST 2023

In the Presence of:

.....

R. NYAKUNDI

JUDGE

