



REPUBLIC OF KENYA



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Muigai Kemei & Associates v Langat & 38 others (Environment and Land Miscellaneous Application E011 of 2022) [2023] KEELC 16824 (KLR) (18 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16824 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2022
CG MBOGO, J
APRIL 18, 2023

BETWEEN

MUIGAI KEMEI & ASSOCIATES APPLICANT

AND

RICHARD K LANGAT & 38 OTHERS & 38 OTHERS & 38 OTHERS & 38 OTHERS RESPONDENT

RULING

1. Before this court for determination is a chamber summons dated 18th November, 2022 expressed to be brought under Article 159 (d) of the Constitution, paragraph 11 (4) of the Advocates Remuneration Order and Sections 1A, 1B, 3, 3A, 79 (G) and 95 of the Civil Procedure Act seeking the following orders: -
 1. That the application be certified as imperative.
 2. That the applicant herein be granted leave to lodge an appeal against the whole ruling of the Hon. Taxing officer out of time.
 3. That the leave so granted do operate to enable the memorandum of appeal enclosed herein be deemed as properly filed subject to payment of requisite court fees.
 4. That the cost of this application be provided for.
 5. Any other or further relief (s) that this honourable court may deem fit and just to grant.
2. The chamber summons is premised on the grounds on the face of it and more particularly as set out in the supporting affidavit.
3. The application is supported by the affidavit of Duncan Kiprono-Advocate practising in the firm of the applicant which was sworn on even date. The applicant deposed that a ruling was delivered in the



- matter on 27th September, 2021 without notice. Further, that counsel made several visits to the ELC registry enquiring whether the ruling had been delivered but the file could not be traced in the registry.
4. The applicant further deposed that they wrote a letter dated 8th February, 2022 requesting for the ruling and which file was later traced around the month of May, 2022 when they learnt that a ruling had been delivered on 27th September, 2021.
 5. In the said ruling, the applicant deposed that the taxing officer taxed the applicant's party to party bill of costs at Kshs. 244,130/= against a bill of Kshs. 2,629,438/- that had been presented for taxation. Further, that the bill of costs is unjust taking into consideration a couple of issues and it would only be fair if the applicant is allowed to file an appeal out of time.
 6. The application was opposed vide grounds of opposition dated 17th February, 2023 on the following grounds: -
 1. That there exists no known provision in law that conceives the filing of an appeal against the decision of a taxing master.
 2. That there exists no known provision in law that preconceives a situation where a memorandum of appeal can be filed in respect to matters of reference.
 3. That no application for leave to file a reference in respect to the decision of the taxing master has since been filed.
 4. That the application dated 18th November, 2022 is not only inept but constitutes an abuse of court process and a fundamental misconstruing and misunderstanding of the law.
 5. That the application has not been timeously brought.
 6. That the applicant has all along been indolent and indeed no indulgence should be extended to an indolent party.
 7. That no proof of visit or perusal has been annexed to support the contestation contained in the application.
 8. That the taxation was done in accordance with the laid down provisions and further the matter was not complex as such no much labour was deployed in the prosecution of the same.
 9. That great prejudice will be occasioned by the respondents if the application is allowed.
 10. That the letter annexed was delivered 10 months after its drafting without a sufficient explanation to the timelines.
 7. This court directed that the application be canvassed by way of written submissions. None of the parties complied with the court's directions.
 8. Be that as it may, I have considered the application and grounds of opposition and the issue for determination is whether this court ought to grant the applicant leave to file an appeal out of time.
 9. The applicant herein filed the instant application seeking the orders that it be allowed to file an appeal out of time against the decision of the taxing officer. The applicant annexed a letter addressed to the Deputy Registrar dated 8th February, 2022 and a memorandum of appeal dated 18th November, 2022.
 10. It was the applicant's averment that an Advocate practising in the law firm made several visits to the registry but the file could not be traced. This claim in my view cannot be substantiated for the reason that if such visits were made by counsel, he ought to have known better by accompanying his visits to



the registry with a letter at hand. Moreover, the letter dated 8th February, 2022 does not bear any receipt stamp to confirm receipt on the registry's part. The question is when was it delivered and received by the registry? Was it sent via email, perhaps?

11. From the above analysis, this court is unable to conclude if indeed the applicant ever visited the registry. And if at all the applicant was able to access the file in May, 2022, it could have filed the instant application then. It beats logic that the applicant being aware of the said ruling in May, 2022 opted to file the application in November, 2022.
12. In addition, the applicant has not supplied this court with a copy of the said ruling to enable it establish and ascertain the averments raised in the application.
13. Paragraph 11 of the *Advocates (Remuneration) Order* provides a detailed process of objection to taxation of costs as follows:

“ 11. Objection to decision on taxation and appeal to Court of Appeal.

- (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.”

14. In the present case, it is apparent that the applicant is objecting to the outcome of the ruling said to be delivered on 27th September, 2021 albeit through a memorandum of appeal annexed to the application.
15. In my view, the applicant was required to file a reference to this court within fourteen days to challenge the decision of the taxing officer and not vide a memorandum of appeal.
16. Under Paragraph 11 of the *Advocates Remuneration Order*, an “appeal” against the decision of a taxing officer in a taxation matter is not provided for. The only procedure provided for an “appeal” or “review” against the decision of a taxing officer is by way of a reference.
17. The reasons adduced by the applicant herein are not satisfactory to grant the orders sought. Even if this court were to consider the averments of the applicant that it was able to get hold of the court file in



May 2022 what then were the reasons for failing to file the application immediately instead of waiting for six months.

18. Arising from the above, I see no merit in the chamber summons dated 18th November, 2022. The same is hereby dismissed. Each party to bear its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 18TH DAY OF APRIL, 2023.

MBOGO C.G.

JUDGE

18/4/2023

In the presence of:

CA:Chuma

