



County Government of Tana River v Miller and Company Advocates (Miscellaneous Civil Application 38 of 2021) [2022] KEHC 17265 (KLR) (20 June 2022) (Ruling)

Neutral citation: [2022] KEHC 17265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS CIVIL APPLICATION 38 OF 2021**

SM GITHINJI, J

JUNE 20, 2022

IN THE MATTER OF THE ADVOCATES ACT

AND

IN THE MATTER OF THE ADVOCATE- CLIENT BILL OF COSTS

AND

**IN THE MATTER OF REFERENCE FROM THE RULING
OF THE TAXING OFFICER OF THE HIGH COURT AT**

MALINDI

BETWEEN

COUNTY GOVERNMENT OF TANA RIVER APPLICANT

AND

MILLER AND COMPANY ADVOCATES RESPONDENT

RULING

CORAM: Hon. Justice S.M Githinji

John Bwire & Associates Advocates for the Applicant

Miller & Co. Advocates for the Respondent

1. This Ruling is in respect of the Notice of Motion dated October 22, 2021 brought under Sections 1A, 1B, 3A, 63 (e) of the *Civil Procedure Act* and Order 40 Rule 7 of the *Civil Procedure Rules*, 2010 and the Advocates Remuneration Order seeking the following orders;

1. Spent.



2. That this Honourable Court do forthwith vary/discharge and/or set aside the Orders issued on July 1, 2021.
3. That the costs of this application be borne by the Applicant/ Respondent.
2. The grounds on the face of the application are that the Applicant on July 1, 2021 obtained orders staying the execution of the Ruling of the taxing Officer and granted orders for the reference annexed to the application be deemed duly filed upon payment of the requisite fees.
3. That to date the Applicant/ Respondent has never filed the said reference nor paid the same or served the Respondent/ Applicant herein with the said Reference and thus continues to enjoy stay of execution orders to the great detriment of the Respondent/ Applicant whose professional legal fees have never been paid for legal work done successfully in favour of the Applicant/ Respondent. That it is in the interest of justice that the orders of July 1, 2021 be forthwith discharged/ set aside to enable the Respondent/ Applicant continue to prosecute its application dated May 25, 2021 in Malindi ELC No 3 of 2020 and have the Judgment entered against the Respondent for the taxed amount of Kshs 3,578,936.25 to recover legal fees.
4. The application is also supported by the Affidavit of Anne Kaguri sworn on October 22, 2021 whose contents are a replica of the grounds on the face of the application.
5. The Respondent filed Grounds of opposition and sought to have the application struck out on the following grounds;
 1. The Application is overtaken by events as the applicant has already filed the reference.
 2. There were no timelines set out by the court within which the Applicant was to file the reference.
 3. The orders sought are draconian and contrary to the overriding objective.
 4. The delay in filing the application is not in any way inordinate.
 5. In the circumstances, it is in the interests of administration of justice that the application be dismissed.

Submissions

6. The Applicant through the firm of Miller & Company Advocates filed submissions on February 4, 2022. Counsel identified two issues for determination; whether the court erred in law in delivering an open-ended order and whether the Appellant is justified in failing to pay the Respondent their legal fees. On the first issue, she submitted that the applicant never filed reference despite obtaining orders on July 1, 2021 staying the execution of the ruling of the taxing Officer. That in the present case, the Taxing Master rightfully taxed the bill at Kshs 3,578,936.25/- as payment of legal services rendered to the applicants.
7. She heavily relied on the authority of *William Koross (Legal personal Representative of Elijah C. A. Koross) v Hezekiah Kiptoo Komen & 4others* (2015) eKLR. It was her submission that the High court has the power to review its own order with guidance of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the rules. That no reasons have been advanced by the Respondent for failure to file the reference as ordered and that the Respondent has taken undue advantage of the orders to hold payment of the Applicant's legal fees, duly taxed.



8. On the second issue, counsel submitted that it is a common law principle that costs follow the event and an advocate should be rightly paid for legal services rendered. She asserted that the applicant should not be prejudiced by the acts of the respondent who continues to disregard court orders.

Disposition

9. I have considered the application, the responses as well as the submissions by the parties.
10. What I am being called upon to determine is whether this Honorable court should vary/ discharge and/or set aside the orders issued on July 1, 2021. The Respondent/ Applicant has asserted that the Applicant obtained orders of stay on July 1, 2021 and at the time of filing the present application, the Applicant/ Respondent had not filed the said reference, and continued to enjoy stay of execution orders at the detriment of the Respondent/ Applicant.
11. The Applicant/ Respondent on the other hand states that the application has been overtaken by events since the reference has already been filed and that no timelines were set out by the court within which the applicant was to file the reference. I do not agree with the Applicant/ Respondent; I note that the ruling of this court was delivered on July 1, 2021 and that the reference was only filed on February 10, 2022 and that the filing was only prompted by the Respondent's application to set aside the said orders.
12. This is a matter where I am called to exercise my discretion and in so doing I must ensure that justice is done to all parties.
13. Court orders are sacrosanct and must be obeyed within time and without excuses. Courts cannot be supplicated to come into the aid of an indolent party, and equity frowns at the indolent. See *Hadkinson v Hadkinson* (1952) 2All ER 567 where the court stated that;

“It is the plain and unqualified obligation of every person, against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”

14. Having weighed the foregoing considerations, it is not sufficient for the Applicant/ Respondent to aver that the application has been overtaken by events while they have been enjoying the orders issued by this court on July 1, 2021 to the detriment of the Respondent/ Applicant. In exercising my discretion in the interest of justice which abhors inordinate delay, I am inclined to allow the application dated October 22, 2021. The orders of July 1, 2021 are therefore vacated.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 20TH DAY OF JUNE, 2022.

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S M GITHINJI

JUDGE

In the presence of; -

1. John Bwire & Associates Advocates for the Respondent(absent)
2. Miss Kaguri for the Applicant

