



Makhecha & Gitonga Advocates v Standard Group PLC (Miscellaneous Civil Application E391 of 2020) [2022] KEHC 13027 (KLR) (Civ) (23 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E391 OF 2020**

JK SERGON, J

SEPTEMBER 23, 2022

BETWEEN

MAKHECHA & GITONGA ADVOCATES ADVOCATE

AND

STANDARD GROUP PLC CLIENT

RULING

1. The advocate/applicant herein has filed the Chamber Summons Reference (“the Reference”) dated November 18, 2021. The Summons is supported by the grounds set out on its face and the facts stated in the affidavit of advocate James Gathuri and sought for the following orders:
 - i. That the time set to file a reference be enlarged.
 - ii. That the taxation be varied or set aside.
 - iii. That cost of the Reference be borne by the client/respondent.
2. The client/respondent put in Grounds of Opposition dated March 22, 2022 to the Reference and raising the following grounds:
 - i. The delay herein is inordinate and 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 April 29, 2021.
 - ii. There is no sufficient cause or reason to inform the exercise of judicial discretion for enlarging time in favour of the applicant.



- iii. 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.
 - iv. The application is therefore vexatious, frivolous and an abuse of the court process which should be dismissed with costs.
3. Pursuant to the directions issued by this court on March 23, 2022 the application was to be disposed of through written submissions, which both parties have filed.
 4. I have considered the grounds set out on the body of the Summons; the facts deponed to in the affidavit filed in support thereof; the Grounds of Opposition and the submissions on record.
 5. A brief background of the matter is that the applicant filed the Advocate-Client Bill of Costs dated September 9, 2020 and sought for the total sum of Kshs.714,396.52 arising out of HCCC no. 216 of 2018 being a defamation claim in which the applicant acted for the respondent at all material times.
 6. The Bill of Costs was placed before the taxing officer, Honourable L. Mumassabba and taxed at the sum of Kshs.475,225/= by way of the ruling delivered on April 29, 2021.
 7. Returning to the Reference, it is clear that the orders sought therein are two-fold.
 8. The first order is for extension/enlargement of time for filing the Reference.
 9. The applicant on its part states that the delay in filing the Reference was occasioned by the fact that the taxing master did not forward the reasons for the ruling in good time, whereas the respondent argues that the Reference was brought over six (6) months since the delivery of the ruling and without a reasonable explanation for the delay, especially since the ruling on taxation bore the reasons thereof and hence there was no need for the applicant to apply for the same.
 10. On that basis, the respondent urges this court to dismiss the Reference.
 11. 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.”

12. 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.
13. Upon my perusal of the record, I observed that on the date of delivery of the ruling on taxation being the 29th of April, 2021 the learned taxing master indicated that the said ruling and reasons thereof were on record, which dispels the explanation given by the applicant that there was a delay by the learned taxing master in providing the same.
14. Furthermore, a copy of the ruling and reasons thereof is on the court record. Therein, the applicant was granted 14 days within which to file a Reference but it did not comply.
15. In addition, there is nothing to indicate that the applicant had complied with the proviso of Paragraph 11(1) (supra) requiring it to file a notice of objection before the taxing master if at all it had not received the reasons as claimed.
16. In as much as the enlargement of time is catered for in the law as seen above, I will reiterate that the same is discretionary in nature.
17. In the circumstances of this case, I am not satisfied that the applicant has given a reasonable explanation for the delay in order to necessitate the enlargement of time within which to file the Reference.
18. Consequently, the Chamber Summons Reference dated November 18, 2021 is hereby ordered dismissed with costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
23RD DAY OF SEPTEMBER, 2022.**

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Advocate/Applicant

..... for the Client/Respondent

