



Republic v Registrar of Companies; Nderitu & another (Exparte); Kedong Ranch Limited & another (Interested Parties) (Application 565 of 2017) [2022] KEHC 18099 (KLR) (Judicial Review) (21 October 2022) (Ruling)

Neutral citation: [2022] KEHC 18099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION 565 OF 2017**

**J NGAAH, J
OCTOBER 21, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF COMPANIES RESPONDENT

AND

DAVID JOHN NDERITU EXPARTE

JOSEPH WAGURA NG'ANG'A EXPARTE

AND

KEDONG RANCH LIMITED INTERESTED PARTY

BOARD OF DIRECTORS MUHOTETU FARMERS LIMITED INTERESTED PARTY

RULING

1. This ruling is in respect of the applicants' chamber summons dated 27 January 2022 brought under Section 1A, 1B and 3A of the *Civil Procedure Act*, cap 21 and Rule 11(2) of the *Advocates Remuneration Order*. The primary prayers in the application have been framed as follows:
 1. That the ruling of the taxing master dated November 15, 2021 together with the certificate of taxation resultant thereto be and is hereby set aside and the 2nd interested party's bill of costs dated May 28, 2019 be taxed afresh.



2. That this Honourable Court be pleased to set aside items 1 and 2 of the interested party bill of costs dated May 28, 2019.
 3. That this Honourable Court be pleased to reassess items 1 and 2 of the 2nd interested party bill of costs dated May 29, 2019, make a finding on the same and substitute its decision to that of the taxing master.
 4. That in the alternative and without prejudice to the foregoing, this Honourable Court be pleased to remit item 1 and 2 of the 2nd interested party bill of costs dated May 28, 2019 for review and reconsideration on the taxation by another taxing master.”
2. The application is supported by the affidavit of Mr. Joseph Mathenge who is the learned counsel for the applicants.
 3. In the affidavit, the learned counsel has sworn that on November 15, 2021 the deputy registrar of this Honourable Court delivered a ruling in respect to the 2nd interested party’s bill of costs dated 28 May 2019.
 4. Being dissatisfied with the ruling, and more particularly on June 4, 2019, the applicants filed a notice to object pursuant to paragraph 11(a) and (b) of the *Advocates Remuneration Order* objecting to the taxation of items 1 and 2 and requested the deputy registrar for reasons for her decision on the said items.
 5. According to the learned counsel for the applicants, the deputy registrar has never given “any or satisfactory reasons for her decision on the amount awarded on instruction fees.”
 6. He has also sworn that the instruction fees assessed at Kshs 1,000,000 is manifestly excessive considering that the suit was not protracted.
 7. The 2nd interested party filed grounds of objection opposing the application. The 2nd interested party’s case is that the reference is incompetent. It is contended on behalf of the 2nd interested party that according to paragraph 11(2) of the *Advocates (Remuneration) Order*, there is a definite time frame within which a reference has to be filed. However, the applicants’ reference was filed fifty days after the ruling had been rendered and hence it is time-barred.
 8. I note from the record that the notice objecting to the taxation was filed on November 24, 2021 and reference to this Honourable Court was eventually filed on January 27, 2022.
 9. Paragraph 11(1) of the *Advocate Remuneration Order* which is one of the provisions under which the reference has been filed states as follows:
 - (1) should any party objects to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of the 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 14 days from the receipt of the reasons apply to a judge by a chamber summons which shall be served on all the parties concerned setting out the grounds of his objection.
 10. A notice objecting to the taxation was filed on 24 November 2021 which was well within the 14-day period it ought to have been filed. The notice states that the applicant objected to the taxation of items 1 and 2 in the bill of costs.



11. The notice of objection required the taxing officer to give reasons for taxation of the referenced items.
12. It is apparent from the learned deputy registrar’s ruling rendered on November 15, 2021 that the reasons for taxation of the disputed items, amongst other items, were contained in the ruling. As a matter of fact, the ruling was captioned “ruling and reasons for taxation on the party and party bill of costs dated May 28, 2019”.
13. The purpose for which the notice to object was required under paragraph 11(1) had been served by the ruling. Since the reasons for the taxation of the disputed items had been given, the notice objecting to the taxation and asking for the reasons for taxation was rendered superfluous.
14. Even then, assuming there was any need to ask for reasons for taxation, it was not until January 27, 2022 that the applicant filed the present reference.
15. According to subparagraph (2) of paragraph 11, the reference must be filed within 14 days of the date of receipt of the reasons for taxation of the disputed items.
16. The reasons, as noted were given on November 15, 2022 and, therefore, the clock started ticking on that particular date.
17. It follows that the reference ought to have been filed by November 30, 2022. But it was not filed almost two months after the limitation period. No reason has been given for this delay.
18. This court is entitled to assume that indeed there was no reason or even any excuse for the delay because the applicants have not, at the very least, made any attempt to invoke subparagraph (4) of rule 11 which gives the court power to enlarge time for doing any act under subparagraph (1) and (2).
19. That subparagraph reads as follows:
 - (1) the High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) of 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 sought time may have already expired.
20. Even assuming that the applicant is right that no reasons were given for the taxation of the disputed items after issue of the notice under subparagraph (1), the applicants were not entitled to file a reference without first seeking extension of time. I suppose it is in the context of the application to extend time that they would have possibly urged that they did not obtain the reasons for taxation in time or at all.
21. But it has been noted earlier that the reasons had been given and therefore that argument would not have been of much help to the applicants.
22. In the final analysis, I find the applicants’ reference to be incompetent. It is hereby dismissed with costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 21 OCTOBER 2022

NGAAH JAIRUS

JUDGE

