



**Kuria v Humphrey & Company LLP (Miscellaneous Application E386 of 2022)
[2022] KEHC 16060 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16060 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E386 OF 2022**

**WA OKWANY, J
NOVEMBER 24, 2022**

BETWEEN

PATRICK NJIRU KURIA APPLICANT

AND

HUMPHREY & COMPANY LLP RESPONDENT

RULING

1. This ruling is in respect to the application dated May 14, 2022 wherein the client/applicant seeks the following orders:-
 1. Spent
 2. That this honourable court be pleased to enlarge time for the applicant to file a reference out of time.
 3. That pending the hearing and determination of the intended reference, this honourable court be pleased to set aside and/or stay the execution of the certificate of costs issued on March 24, 2022.
 4. That pending the hearing and determination of this application, this honourable court be pleased to stay proceedings in MISC no E315 of 2020.
 5. That upon inter partes hearing of this application, this honourable court be pleased to stay proceedings in MISC no E315 of 2022 pending the hearing of the intended reference.
 6. That the costs of this application be provided for.
2. The application is supported by the applicant's affidavit and is premised on the grounds that:-



1. That the applicant engaged the respondent to provide him with legal services in appealing to the High Court against the decision of the Tax Appeals Tribunal dated February 21, 2021.
 2. That the parties thereafter had a fall out and the applicant changed advocates.
 3. That the respondent proceeded to file an advocate-client Bill of Costs dated October 27, 2021 under Miscellaneous Application no 803 of 2022.
 4. That by a ruling dated March 11, 2022, the deputy registrar taxed the Bill of Costs at kshs 3,521,704.58.
 5. That dissatisfied with that ruling and intending to object to the taxation, the applicant instructed us to take the necessary action.
 6. That consequently, pursuant to paragraph 11(1) of the Advocates Remuneration Order, we filed an objection dated March 24, 2022 and sought reasons from registrar for the ruling.
 7. That the said objection and reasons were sought within the timelines as espoused under paragraph 11 of the Advocates Remuneration Order.
 8. That to date, the registrar is yet to issue any reasons for the said decision.
 9. That nevertheless, the respondent, by an application dated April 22, 2022 has proceeded to seek for adoption of the certificate of the certificate of costs dated March 24, 2022 as an order of the court in MISC E315 of 2022.
 10. That the same is coming up for hearing on June 9, 2022.
 11. That consequently, the application to have the certificate of costs adopted as judgment of the court is premature as I intend to file a reference against the decision of the taxing officer.
 12. That it is imperative that the application annexed herewith is heard in priority and the orders sought granted as the respondent shall proceed to execute the said judgment and the applicant will be precluded from filing a reference as intended.
3. The respondent/advocate opposed the application which was thereafter canvassed by way of written submissions.
 4. The issues for determination are as follows:-
 - a. Whether this honourable court should enlarge time for the applicant to file a reference out of time.
 - b. Whether this honourable court should set aside/stay the certificate of costs dated March 24, 2022 and stay proceedings in miscellaneous 315 of 2021.

Enlargement of time

5. Paragraph 11(4) of the Advocates Remuneration Order stipulates as follows:-

“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.”



6. The principles governing the enlargement of time were discussed by the Supreme Court in *County Executive of Kisumu vs County Government of Kisumu and 8 Others* [2017] eKLR as follows:-

“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 to 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 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.”

7. Paragraph 11(1) of the Advocates Remuneration Order stipulates as follows:-

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.

8. In the instant case, the applicant explained that he complied with the provisions of paragraph 11(1) of the ARO by filing an objection to the taxation the reasons for the taxation. He therefore attributed the delay in filing the reference to the delay, by the deputy registrar, in supplying him with the reasons for taxation.

9. My finding is that the reasons advanced by the applicant for seeking the enlargement of time within which to file the reference are plausible. I also note that the delay in filing this application is not inordinate.

10. Turning to prayer to set aside/stay the Certificate of Costs dated March 24, 2022, I note that it was not disputed that the respondent/advocate has already filed the Notice of Objection within the prescribed timelines of 14 days. I note that the ruling, on taxation, was rendered on March 11, 2022 and the notice of objection containing a request for the reasons for the taxation filed on March 24, 2022. I find that the objection was filed within the prescribed time lines.



11. The applicant further explained that he had not been supplied with the reasons for taxation as at the time of filing the present application.
12. According to the applicant, he could only have filed a reference challenging the taxation upon being supplied with the reasons. I note that the certificate of costs has already been issued and an application for its adoption as the judgment of court filed. This is to say that the advocate has already taken steps towards enforcing the Certificate of Costs when the applicant is still waiting to be supplied with the reasons for the taxation to enable him file a reference.
13. Having found that the applicant has sufficiently explained the reasons for the delay in filing the reference, I find that it will only be just and fair to stay the proceedings geared towards adopting the said certificate of costs pending the filing, hearing and determination of the intended reference.
14. For the above reasons I find that the application dated May 14, 2022 is merited and I therefore allow it in the following terms :-
 - a. The applicant/client is granted leave to file the reference out of time.
 - b. The said reference to be filed and served within 14 days from the date of this ruling.
 - c. There shall be stay of proceedings in MISC E315 OF 2022 pending the hearing and determination of the reference.
 - d. The costs of this application shall abide the outcome of the reference.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF NOVEMBER 2022.

W A OKWANY

JUDGE

In the presence of: -

Mr Khaemba for the applicant

Mr Bosire for Omondi for respondent.

Court Assistant- Sylvia

