



Makhecha & Gitonga Advocates v Standard Group PLC (Miscellaneous Civil Application E362 of 2020) [2022] KEHC 15752 (KLR) (Civ) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15752 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E362 OF 2020**

JN MULWA, J

NOVEMBER 24, 2022

BETWEEN

MAKHECHA & GITONGA ADVOCATES APPLICANT

AND

STANDARD GROUP PLC RESPONDENT

RULING

1. Before the court is a chamber summons dated December 6, 2021 brought by the applicant herein under paragraph 11 (1) (4) of the *Advocates Remuneration Order*. The applicant seeks the following orders:
 1. That the time set to file a reference be enlarged.
 2. That the taxation be varied or set aside.
 3. That the cost of this reference be borne by the client/respondent.
2. The application is supported by the affidavit of James Gathuri, an advocate from the applicant's firm.
3. The respondent did not oppose the application.
4. I have considered the applicant's affidavit and the submissions tendered in support of the application. The main issue for determination is whether the applicant is entitled to an order for enlargement of time within which to file a reference against the taxing officer's decision of April 19, 2021.
5. The legal framework on extension of time within which to file a notice of objection to taxation and/or a reference is clearly stipulated under paragraph 11 of the Advocates Remuneration Order which provides as follows:



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.'
6. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR*, the Supreme Court set down the principles for extension of time, as follows:
1. Extension of time is not a right of 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 a 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;
7. On the issue of delay, Mohammed JA. (as he then was) held as follows in *George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others [2014] eKLR*: -
- ' The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.'
8. The same position was taken in *Stanley Kaboro Mwangi & 2 Others v Kanyamwi Trading Company Limited [2015] eKLR* where the court held that: -
- ' A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercised.'



9. From the above authorities, it is clear that the court is clothed with the discretion of allow an application for enlargement of time within which to perform an act provided the applicant demonstrates that there was sufficient cause for the delay.
10. In the instant case, the applicant attributes the delay in filing the reference to the alleged failure by the taxing officer to forward the reasons for the ruling within 14 days after taxation. The applicant contends that it wrote a letter dated April 21, 2021 to the deputy registrar requesting for a copy of the typed ruling to enable them file a reference but it was not until November 1, 2021 that they received a copy of the typed ruling and reasons for taxation.
11. I note that that the taxing officer's decision was delivered on April 19, 2021. The court quorum for that day shows that the applicant was represented by a Ms Mwangi. The taxing officer, Hon Mumassabba indicated that the ruling and reasons for taxation were on record meaning that the same was ready. I have looked at the annexed letter dated April 21, 2021 purportedly addressed to the deputy registrar of this court requesting for a copy of the ruling and reasons for taxation. There is nothing to show that the letter was ever sent to the deputy registrar or uploaded on the CTS portal so that it could be placed in the court file and acted upon. Further, the appellant has not indicated what other steps were taken within the eight months period before the instant application was brought, to follow up on the copy of the ruling and reasons for taxation.
12. In the premises, I find that no logical and or plausible reason has been advanced for the delay in filing the reference. The applicant is therefore not entitled to the discretionary order of enlargement of time. Having found so, it logically follows that there would be no basis for determining the other prayers in the application.
13. Consequently, the applicants chamber summons dated December 6, 2021 lacks merit and is hereby dismissed with no orders as to costs.

Orders accordingly.

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

J.N. MULWA

JUDGE

