



Makhecha & Gitonga Advocates v Standard Group Limited (Miscellaneous Civil Application 179 of 2020) [2022] KEHC 16459 (KLR) (Civ) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 16459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL**

MISCELLANEOUS CIVIL APPLICATION 179 OF 2020

DO CHEPKWONY, J

NOVEMBER 24, 2022

BETWEEN

MAKHECHA & GITONGA ADVOCATES APPLICANT

AND

STANDARD GROUP LIMITED RESPONDENT

RULING

1. Before this court is a Chamber Summons Application dated November 18, 2021 and seeking orders that;
 - a. The time set to file a reference be enlarged.
 - b. The taxation be varied or set aside.
 - c. The cost of this reference be borne by the Client/Respondent

2. The application is premised on the grounds on its face and in the Supporting Affidavit of James Gathuri sworn on November 18, 2021. It is stated that the Plaintiff in HCCC No.41 of 2016 filed a plaint dated February 12, 2016 seeking damages for libel, a permanent injunction to restrain the Defendants from further publishing or broadcasting or causing to be published or broadcast, the said words, pictures and images or any words, pictures and images similarly defamatory of the Plaintiff, and costs. That the client withdrew instructions on February 14, 2020 and the Taxing Master taxed the Bill at Kshs. 205,129.10/- on August 5, 2021. Further, that the Taxing Master erred in failing to apply the correct principles and factors in finding that the prayers in the Plaint were non-monetary and that it was not possible to ascertain the value of the subject matter despite the Plaintiff seeking General damages for libel. It is contended that the delay in filing the reference has not been deliberate but attributed to the Taxing Master's delay in forwarding the reasons for the Ruling.



3. The Application is opposed vide the grounds of opposition dated June 13, 2022. It is stated that the Applicant has not met the principles for exercise of judicial discretion for extension of time as set out in the case of *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] eKLR. That the Applicant does not deserve enlargement of time to bring a reference against the decision of the Honourable Taxing Master dated and delivered on August 5, 2021 as no explanation or reasons accounting for the delay have been advanced. That the Taxing Master's decision was sound in principle and should not be disturbed. Further that there is no demonstration whatsoever that the circumstances for interfering with the decision of the Taxing Master as set out in the case of *First American Bank of Kenya v Shah and others* [2002] 1 EA 64 have been met that the Reference should be struck out with costs for being incompetent.
4. On March 24, 2022, the counsel for the parties agreed to canvass the application by way of written submissions. The Applicant filed written submissions dated May 20, 2022, while the Respondent opted to rely on Grounds of Opposition dated June 13, 2022.

Determination

5. In determining the application dated November 18, 2021, I have taken into consideration the pleadings, the rival arguments together with the cited statutes and case law by the parties. The main issues for determination are:
 - a. Whether time set to file a reference can be enlarged in this case.
 - b. Whether taxation can be varied and or set aside.
 - c. Who bears the costs of the reference?
6. The law on enlargement or extension of time within which to bring a reference is set out under Paragraph 11(4) of the *Advocates Remuneration Order*, which provides that;
 - 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 which he objects.
 - 2) The taxing officer shall forthwith record and forward to the objector the reasons or 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) 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 expired."



7. In the case of *County Executive of Kisumu v County Government of Kisumu and 8 others* [2017] eKLR, the Supreme Court of Kenya held thus:

“(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 underlying principles that a Court should consider in exercise of such discretion:

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; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

8. In the instant case, the delay in bringing the Application herein has been attributed to the alleged delay by the taxing officer in giving reasons for taxation. The court has not been told when the reasons were sought from the taxing officer and when the same were delivered to the Applicant for this court to be able to measure the amount of delay if any. I note that the Taxing Master’s ruling and reasons for taxation were issued on August 5, 2021 whereas the instant Application is dated November 18, 2021. The delay is about 3 months which in my view is not so inordinate.

9. The issue of whether or not to vary and or set aside the taxation will be dealt with in the determination of the reference.

10. Consequently, and in the interest of justice, the Application dated November 18, 2021 be and is hereby allowed in the following terms:

- a. The time within which to file a reference be and is hereby enlarged.
- b. The Applicant be and is hereby granted leave to file and serve the reference within twenty-one (21) days from the date hereof.
- c. The Respondent is equally granted twenty-one (21) days to file and serve a response.
- d. Mention on February 2, 2022 for parties to confirm compliance and file further directions

11 It is so ordered



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS24TH DAY OF ...NOVEMBER..., 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Gathuri counsel for Applicant/Advocate

No appearance for and by Respondent/Client

Court Assistant - Simon

