



**Wekesa & Simiyu Advocates v Geothermal Development
Company Limited (Miscellaneous Application E721 of 2021)
[2022] KEHC 16140 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E721 OF 2021
WA OKWANY, J
NOVEMBER 24, 2022**

BETWEEN

WEKESA & SIMIYU ADVOCATES APPLICANT

AND

GEOTHERMAL DEVELOPMENT COMPANY LIMITED RESPONDENT

RULING

1. This ruling settles two applications namely:-
 - a. The application dated February 8, 2022 wherein the applicant/advocates seeks, *inter alia*, orders for entry of judgment for the sum of Kshs 51,974,497.44 being the outstanding balance of costs taxed on January 14, 2022.
 - b. The Chamber Summons dated March 23, 2022 wherein the client seeks orders for the extension of time within which to file notice of objection to the decision of the Taxing Officer.
2. I will consider the client's application first as its outcome will determine whether the advocate application should be dealt with or if the same should await the outcome of the notice of objection to taxation.



Client's Application

3. The application for the extension of time to file the notice of objection is supported by the affidavit of the client's Ag General Manager, Legal Services Ms Agnes Muthengi and is premised on the grounds that :-
 - i. The applicant were inadvertently absent at the delivery of the decision of the Taxing Officer on January 14, 2022.
 - ii. That the applicant herein were only able to access a copy of the ruling of the Honourable Stephany Githongori on January 28, 2022 when the same was posted on the Judiciary efilng portal.
 - iii. That by the time to accessing the ruling of the Honourable Stephany Githongori, on the January 28, 2022, the statutory fourteen (14) day period for lodging a reference under the *Advocates (Remuneration) Order*, 1962 had lapsed.
 - iv. The applicant/client wish to file reference against the decision of the Taxing Officer.
 - v. That the applicant has a good and arguable case.
 - vi. The court has unfettered discretion to extend the time for lodging notice of objection to the decision of the Taxing Officer.
4. The advocate opposed the application and parties canvassed it by way of written submissions which I have considered.
5. The main issue for determination is whether the client has made out a case for filing of the notice of objection to the taxation.
6. It is trite that the court has unfettered discretion to extend time within which to file certain pleadings or to take certain actions. The court's discretion must however be exercised judiciously and only in the most deserving cases.
7. In the present case, it was not disputed that the impugned ruling on taxation was delivered on January 14, 2022. The client's concedes that it became aware of the ruling on January 28, 2022 when it was posted on the Judiciary efilng portal by which time the 14 days period for lodging a reference under the *Advocates (Remuneration) Order* (AR0) had lapsed.
8. The client however filed the instant application March 23, 2022 which is a period of almost 2 months after it became aware of the impugned ruling.
9. The client attributed the delay in filing the application to the following factors:-
 1. The delay in bringing this reference application is inadvertent as was occasioned by the process of procuring instructions from the board of directors.
 2. That as internal legal counsel, we do not have standing instructions on litigation and was obliged to seek instructions from the board of directors on the instant application.



3. That the Board of directors are now limited in its sittings by a circular from the Head of Public Service to stick to the board meetings recognized in the Board Al Manac. (Annexed herewith and marked AM-6 is a copy of the said directive from the Head of Public Service).
 4. That the constraint of limiting board meetings necessitated the circulation of the request for instructions in the instant case and the board directors ended up granting the authority to sue via circulation on the 11th day of March 2022 to allow the internal legal counsel to come on record to institute this present application(annexed herewith and marked AM-7 is a copy of the authority to sue).
 5. That the delay in filing is not inordinate as an application has been made within 14 days of the Board of Directors issuing instructions to institute suit.
 6. That previously the Geothermal Development Company was presented in this matter by Beatrice Kosgei, advocate, then the General Manager Legal Services who has since retired from public service on 2nd day of February 2022, necessitating my appointment as Acting General Manager Legal Services (annexed herewith and marked AM-8 is a copy of the notice of appointment advocates for the respondent/applicant in the HCCCOMMISC E 721 of 2021).
10. From a keen scrutiny of the reason advanced by the client for the delay in filing the objection, one cannot help but get the feeling that the client seems to suggest that the provisions of the *Advocates Remuneration Order* regarding the timelines for filing pleadings can be adjusted to fit the programs or internal operations of an organization in as far as appointing the advocates to represent them in a suit is concerned.
 11. The reasons presented by the client further paints a picture of a litigant who was not in a hurry to beat the deadlines set by the *Advocates Remuneration Order* as shown in the number of days that it took to file the application even after becoming aware that the set timelines had expired.
 12. This court further notes that the advocate did not file the application for entry of judgment on taxed costs immediately after the expiry of the set timelines as the advocate's application was filed at least one week later on February 8, 2022.
 13. For the reasons I have stated in this ruling, I find that the client was indolent and is therefore not entitled to the orders for extension of time within which to file the reference.
 14. My finding is that no plausible reasons have been presented for the delay in filing the application dated March 23, 2022 which I hereby dismiss with no orders as to costs.

The Advocates Application

15. The application dated February 8, 2022 is supported by the affidavit of Erick Masafu advocate and is premised in the grounds that:-
 1. The taxing officer by ruling made on May 6, 2021 taxed the advocate/client bill of costs of the advocate/applicant dated September 28, 2021 at the sum of Kshs 51,974,497.44.



2. The advocate/applicant was issued with a certificate of taxation of costs dated January 26, 2022.
 3. The certificate of taxation of costs aforesaid has not been varied or set aside through any order of this honourable court.
 4. The advocate/applicant in its written submissions admitted that the client/respondent had made a part payment of Kshs 8,323,000.00.
 5. The advocate/applicant states that prior to filing their advocate/client bill of costs they did serve the client/respondent with a material payment note dated 2April 9, 2021 an which the client/respondent neglected, refused and failed to pay.
 6. The services rendered by the advocate/applicant stretch back to over six years ago and the client/respondent ought meet its part of the bargain and pay for services it benefitted from the advocate/client.
 7. The reality of inflation impels that the advocate/applicant ought to be cushioned on the value of its legal fees by a charge of interest as provided by the law.
 8. The Advocates Remuneration Order 2009 provides for the charging of interest by an advocate for his costs at 14% per annum and this is an appropriate case for interest to be entered as from the date of filing this case in court on September 28, 2021 until payment in full.
 9. The client/respondent is obliged by the dictates of the law to pay for services rendered under the national values and principles of governance at article 10 of the Constitution of Kenya 2010.
16. The main issue for determination is whether judgment should be entered in favour of the advocates for the taxed costs.
17. It is not disputed that the taxing officer already rendered a ruling on taxation in favour of the advocate for the sum of Kshs 43,651,597.44. There is no pending reference or objection to the taxation and I therefore find that the application dated February 8, 2022 is merited. Consequently, I allow it in the following terms: -
- a. Judgment is hereby entered in favour of the advocate for the sum of Kshs. 51,974,497.44 together with interest at 14% from the date of taxation until payment in full.
 - b. I also award the advocate the costs of the application.

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

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Wekesa for applicant

Mr. Chemngorem for Topoti for respondent



Court Assistant- Sylvia

