



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL. NO. 820 OF 2013

RULING

MUEMA KITULU T/A MUEMA KITUTU & CO. ADVOCATE.....APPLICANT

VERSUS

JOHN BOSCO NGETA MAUNDU.....RESPONDENT

RULING

1. The application dated 9th December, 2020 seeks orders that:

1.Spent

2.This honourable court be pleased to extend the time for filing Notice of Objection to the Taxing Master's ruling and the Notice of Objection annexed hereto and marked "A" be deemed as duly filed and served subject to payment of the requisite court filing fees.

3.This honourable court be pleased to set aside, review or substitute the taxing master's decision issued on 21st May, 2020.

4.Costs of the application be in cause.

2. It is stated in the grounds and the affidavit in support of the application that the ruling by the Taxing Master was communicated to the parties through a cause list posted on the court's website. That the same did not reach the Applicant's attention until 9th June, 2020 when the Applicant accessed his chambers which had been under lockdown since the 16th March, 2020 due to the outbreak of the COVID 19 Pandemic.

3. It is averred that the Advocate/Client Bill of Costs was taxed in the Applicant's favour on 21st May, 2020 at Ksh.636,803/= and a certificate of taxation issued for the said amount. That, subsequently, the Applicant applied for the entry of judgment for the taxed costs but the Respondent objected to the application. That a protracted litigation followed leading to directions being issued by the Judge for the taking of accounts on previous payment before the Deputy Registrar. That the Deputy Registrar after taking the accounts arrived at the sum of Ksh.404.193/= and judgment was subsequently entered for the said amount.

4. The Applicant's complaint is that on 21st August, 2019 he filed a supplementary Bill of Costs dated 26th July, 2019 seeking to recover the costs related to the lengthy litigation which followed the Respondent's objection to the entry of Judgment. That the supplementary Bill of Costs which sought a further sum of Ksh.222,203.90 was heard by the Taxing Master and a ruling delivered through email on 21st May, 2020 and the aforesaid Bill of Costs was dismissed. The Applicant is dissatisfied with the said ruling. It is stated that the ruling offends the provisions of Section 27(1) of the Civil Procedure Act Cap 24 Laws of Kenya which stipulates that costs follow the event unless expressly denied by a Judge. The Applicant further contended that the application was dismissed for want of format contrary to the provisions of Order 51 rule 10(1) and (2) Civil Procedure Rules.

5. The application is opposed. It is stated in the replying affidavit that the application lacks merit and is an abuse of the court process. It is averred that there is no justifiable reason given for the delay as the cause list was communicated through the court's website and therefore the Applicant has not demonstrated that he exercised due diligence.

6. It is further stated that the intended appeal has no chances of success. According to the Respondent, the Applicant who was his former advocate ought not to have filed the application for entry of judgment for the taxed sum of Ksh.636,803/= as the Applicant was holding the

sum of Ksh.700,000/= deposited in his account as part of payment of the decretal sum and could have communicated his intention to deduct the taxed amount from the said account. It is further stated that the matter was referred to the Deputy Registrar to consider the Respondent's plea for set off. It is contended that the court did not make any award of costs in its ruling dated 31st March, 2017 nor on 13th April, 2018 when the report of the Deputy Registrar was adopted.

7. I have considered the application, the response to the same and the written submissions filed by the respective counsel for the parties.

8. Paragraph 11 of the Advocates Remuneration order 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 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.”

9. This court therefore can exercise discretion to extend the time, in appropriate cases. The discretion however has to be exercised judiciously.

10. The background facts that led to the filing of the application at hand are not in dispute. It is clear from the affidavit evidence that the ruling by the Taxing Master was delivered as per the court's cause list which was posted through the court's website. This followed the closure of the courts from the 16th March, 2020 following the outbreak of the COVID 19 Pandemic. The courts were not operating in their usual manner and a party can be forgiven for the oversight. Consequently, I am satisfied with the reasons given for the delay. The delay was for about 19 days the same is not inordinate and has been explained to the satisfaction of the court.

11. Prayer 2 of the application having been allowed, prayer No. 3 fails as the same will be the subject of the filing of Notice of Objection and of subsequent proceedings.

12. With the foregoing, the application is allowed in terms of prayer No. 2. The requisite court fees to be paid within 14 days from the date hereof. Costs of this application to be borne by the Applicant.

DATE, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2021

B. THURANIRA JADEN

JUDGE