



**Everton Coal Enterprises Limited v Wanjiru Theuri & Company Advocates (Miscellaneous Application 41 of 2021) [2023] KEELC 19278 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19278 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION 41 OF 2021**

**BM EBOSO, J**

**JULY 27, 2023**

**BETWEEN**

**EVERTON COAL ENTERPRISES LIMITED ..... CLIENT**

**AND**

**WANJIRU THEURI & COMPANY ADVOCATES ..... ADVOCATE**

**RULING**

1. On 14/10/2021, M/s Wanjiru Theuri & Company Advocates presented an advocate/client bill of costs dated 12/8/2021. The bill was drawn at Kshs 41,847,861. On 29/8/2022, the taxing officer of this court, Hon F Mutuku, taxed the bill of costs at Kshs 2,238,190. Her decision was rendered in the presence of Mrs Ngugi for the advocate and Mr Mbarire for the client. The decision was titled “Ruling in taxation and reasons”.
2. Subsequently, on 20/9/2022, the client, through M/s Mahugu Mbarire Advocates, presented a notice of objection to taxation dated 9/9/2022, intimating the client’s objection to the taxing officer’s decision on items 1, 51 and 85 of the bill of costs. On the same day, 20/9/2022, the client brought a reference by way of a chamber summons of even date, challenging the taxing officer’s decision. In response, the advocate brought a preliminary objection dated 19/10/2022, inviting this court to strike out the reference on the following verbatim grounds:

“

- “1. The reference was filed out of time.
2. The stay of execution sought is premature as no judgment has been obtained.
3. The application lacks merit.”



3. This court considered the said preliminary objection and rendered a ruling dated 16/11/2022, in which it upheld the objection. The court struck out the reference for having been initiated outside the prescribed limitation period. The client was condemned to bear costs of the reference.
4. Subsequent to that, the client brought a chamber summons dated 17/11/2022, seeking the following verbatim orders:
  1. That this application be certified as urgent and service of the same be dispensed with in the first instance.
  2. That this honourable be pleased to enlarge the time within which a taxation objection notice and a reference against the Taxing Master's decision of August 29, 2022 ought to have been filed.
  3. That the taxation objection notice and reference filed herewith be admitted and be deemed as duly filed.
  4. That this honourable court be pleased to review vary or set aside the decision of the learned taxing master contained in the ruling in Miscellaneous application No E041 of 2021 in the matter of advocate client bill of costs between Wanjiru Theuri & Company Advocates and Everton Coal Enterprises Limited dated August 29, 2022.
  5. That this honourable court be pleased to make any orders it deems mete and just.
5. On or about 23/2/2023, the client filed a notice of withdrawal, intimating their withdrawal of prayers (3), (4) and (5) of the chamber summons dated 17/11/2022. The above position was confirmed by Mr. Nganga, counsel for the client, on 29/5/2023. What therefore falls for determination in this ruling is the client's plea for an order enlarging the time for initiating a reference. The plea for enlargement of time is supported by the affidavit of Dr. Patrick Karanja Ngugi, a director of the client, sworn on 17/11/2022, and a further affidavit by the same deponent, sworn on 20/2/2023. The case of the client is that they requested the court for a copy of the taxation ruling but the ruling was not availed to them on time.
6. The advocate opposed the application through a replying affidavit sworn on 2/2/2023 by Wanjiru Theuri Ngugi. The advocate contends that counsel for the client was present when the ruling on taxation was rendered and therefore nothing prevented the client from initiating the reference within the prescribed time. The advocate further contends that the ruling of the court was available all along, adding that they applied for a copy of the ruling and were supplied with one.
7. I have considered the application, the response to the application and the parties' respective submissions. I have also considered the relevant legal framework and jurisprudence. The single question to be determined in this ruling is whether the client has satisfied the criteria upon which our courts exercise jurisdiction to enlarge limitation period. I will dispose the question through brief analysis and determination.



8. The criteria which guides our courts when exercising jurisdiction to enlarge limitation period was outlined by the Supreme Court of Kenya in the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR 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; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

9. The present application for an order enlarging the limitation period was preceded by a reference which the client initiated without a prior enlargement order of the court. The said reference, alongside the notice of objection, were struck out for having been initiated outside the limitation period without an enlargement order. As soon as the court rendered its ruling, the client brought the present application.

10. The client has explained that inability to access a copy of the impugned ruling is what hindered them from initiating the reference within the prescribed time. The impugned ruling was rendered on 29/8/2022. The ill-feted preceding reference was initiated on 20/9/2022. The fourteen days limitation period lapsed on 12/9/2022. Between that time and the day when the ill-feted reference was initiated was a period of eight days. The court is alive to the fact that a party initiating a reference is obligated to itemize the contested assessment based on individual items in the bill of costs. A prior perusal of the ruling is, in the circumstances, always necessary.

11. Taking into account the relevant criteria; the above circumstances; and the explanation tendered by the client, it is the view of the court that the criteria for enlargement of time has been satisfied, and that the advocate can be properly indemnified through an award of reasonable costs.

12. Consequently, I will grant the client seven (7) working days from today, within which to lodge a fresh notice of objection and file a chamber summons constituting the substantive reference. The client will within the same period of seven (7) days pay to the advocate throw away costs of Kshs 50,000 covering the present application. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 27TH DAY OF JULY 2023**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**



Mr Nganga Ngugi holding brief for Ms Ngugi for the Advocate

Mr Mahugu Mbarire for the Client

Court Assistant: Ms Osodo

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