



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MISCELLANEOUS APPLICATION NO. 141 OF 2018**

**BEING AN ADVOCATE/CLIENT BILL OF COSTS**

**BETWEEN**

**SPIRE BANK LIMITED.....CLIENT/APPLICANT**

**-VS-**

**MAMICHA & CO ADVOCATES**

**NDERITU & PARTNERS ADVOCATES....ADVOCATES/RESPONDENTS**

**RULING**

1. This is a ruling on the Notice of Motion dated 14/11/2019. The same was brought under *Article 159 (2) (d) of the Constitution of Kenya, Rule 11 (4) of the Advocates’ Remuneration Order, Order 43 (y), Order 50 Rule 5, Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 27 and 28 of the Limitations of Actions Act CAP 22 of the Laws of Kenya, Section 1A, 1B, 3A and 79G of the Civil Procedure Act CAP 21 of the Laws of Kenya.*

2. In the Motion, the applicant sought various orders including, the extension of time to file a reference against the taxation in this matter; a stay of execution of orders arising from the ruling delivered on 29/8/2019 by the Deputy Registrar; the setting aside of the said decision and the restraining of the respondent advocates from contacting the applicants directly other than through their advocates on record.

3. The grounds upon which the application was brought were set out in its body and the supporting affidavit of **Miriam Kamunya**, advocate sworn on 11/11/2019. It was contended that; through the ruling delivered on 29/8/2019, the advocate’s client bill of costs filed on 5/12/2018 was taxed at Kshs. 10,155,497/00. That no ruling notice was served as a result, the applicant’s advocates only learnt of the ruling on 1/11/2019 through the respondent’s letter to the applicant dated 25/10/2019.

4. It was further contended that the respondents were threatening to execute for the said amount. The applicant was aggrieved by the said ruling because the taxed amount was excessive and exaggerated considering the negligible services provided by the respondents. That in the premises, the applicant would like to object to the taxation and therefore seeks leave to file its reference out of time.

5. The application was opposed vide the grounds of opposition filed on 27/11/2019 by the 1<sup>st</sup> respondent and the affidavit of **Wilfred Ngunjiri Nderitu**, Advocate on 27/11/2019. He deponed that it was untrue that the applicant learnt of the ruling on 1/11/2019. That no execution had been threatened as a suit had first to be filed in accordance with *Section 51 (2) of the Advocates Act* to enforce recovery. That the respondents were within their rights to demand payment of their professional fees. He urged that security be ordered against the applicant as it was undergoing serious financial challenges.

6. The applicant submitted that this court has jurisdiction to grant the extension of time to file a reference out of time pursuant to *Order 50 Rule 5 of the Civil Procedure Rules 2010* and *Paragraph 11 (4) of the Advocates Remuneration Order 2009*. That the application was made timeously, barely twenty one (21) days after learning of the decision sought to be challenged. The applicant however did not submit, prayer for setting aside the subject ruling. That prayer seems to have been abandoned for good reason.

7. At the time of writing the ruling, the respondents had not filed their submissions.

8. *Paragraph 11 of the Advocates (Remuneration) Order* provides:-

....

*iv) "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. From the foregoing, it is clear that this Court has the power in its discretion to enlarge time. That discretion however, like all other discretions must be exercised judiciously. The applicant seeks an extension of time within which it may file its reference against the decision of the taxing master/officer.

10. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] Eklr*, the Supreme Court of Kenya set out the principles which a court has to take into consideration in an application for extension of time.

11. The grounds advanced is that, the deputy registrar did not give any notice to the applicant. That fact was not challenged. I have perused the record. The ruling was first fixed for delivery on 25/3/2019. It was adjourned to 20/6/2019 when it was deferred to 23/7/2019 when nothing happened. Then the ruling was delivered on 29/8/2019 in the absence of the parties.

12. A notice having not been issued, there is no way the applicant could have known of the outcome and thereby object to the ruling within time or at all. By the time the applicant had notice of the ruling, time for lodging an objection had already passed.

13. The present application was filed timeously. The applicant cannot be said to be seeking to delay the respondent's right to enjoy the fruits of their ruling.

14. As regards prejudice, if the extension is denied, the applicant's right to challenge the decision of the deputy registrar would forever be lost for no fault of its own but that of the Court. However, on the other hand, if the extension is granted, the respondents' prejudice will only be a delay in the enjoyment of their fruits of the ruling that is in their favour. Weighing the two, it is preferable to delay the respondents' enjoyment of their fruits than to forever shut out the applicant from the seat of justice for no fault of its own.

15. On the prayer for stay of execution, I see no danger that will warrant the grant of such order. A Certificate of taxation cannot be executed. The respondents must first file a plaint in respect of the said Certificate. In this regard, that prayer is declined.

16. On the prayer to restrain the respondents from contacting the applicant directly, I do not think that is a serious issue that requires to be litigated on. There is evidence on record that when the respondents tried to contact the applicant through its advocates on record, the mail could not go through the address that had been supplied by the said advocates.

17. In this regard, that prayer is declined. Let the applicants advocates supply the respondents with a working and dependable address, both physical, postal and e-mail. A letter dated 5/1/2019 by the respondents to the applicant and received by the Court on 11/2/2019 is clear on that. There is no evidence that the applicant's advocates ever replied to that letter.

18. In any event, the letter dated 25/10/2019 addressed to the applicant was proper as it was a formal demand for settlement of the taxed amount. That would give the respondents the legal standing to demand for costs in the event they file suit to enforce the Certificate of Taxation. However, there was no indication that the respondents' intend to communicate directly with the applicant.

19. As regards the respondents' prayer that the applicant do provide security, that can only be entertained in a properly filed application. The same cannot be entertained in the present form.

20. In the premises, the application is only allowed to the extent that leave is granted to the applicant to object to the decision in question within 14 days.

21. In the circumstances of this case, I order that each party do bear own costs.

**SIGNED** at Meru

**A. MABEYA**

**JUDGE**

**DATED and DELIVERED at Meru this 27<sup>th</sup> day of February, 2020.**

**F. GIKONYO**

**JUDGE**