



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISCELLANEOUS CAUSE NO. 12 OF 2014

AMUGA & CO. ADVOCATES.....ADVOCATES

-VERSUS-

JOYCE NZISA.....1ST RESPONDENT

MONICA NDUNGE MWONGELA.....2ND RESPONDENT

CONNIE MBITHE MUIA.....3RD RESPONDENT

MARY MUSUKI MUDACHI.....4TH RESPONDENT

JOSEPH LOMBA MWONGELA.....5TH RESPONDENT

R U L I N G

1. The background of this matter was discussed in the Ruling of this court of 22nd May 2019 and I can do no better than reproduce it here as follows as I begin to consider the applications before me:

1. The Advocates, **Amuga and Company Advocates**, represented **Joyce Nziza, Monica Ndunge Mwangela, Connie Mbithe Muia, Mary Musuki Mudachi** and **Joseph Lomba Mwangela** in the **Succession Cause No. 162 of 1979**. There is however dispute by Joyce Nziza whereby she alleges the Advocates did not act for.

2. The Advocates filed Advocate/Client Bill of Costs which was taxed on 30th July 2014 at Kshs. 11,894,926. A reference was filed against the taxation of that Bill of Costs and the Advocates in turn filed an application for entry of judgment for the taxed costs. On 23rd February 2015 the client's reference was dismissed and judgment was entered for the Advocates for the taxed costs.

3. Since the Judgment was not settled the Advocates sought execution by attachment of L.R. No 209/7190/113. That attachment was allowed by the Deputy Registrar on 21st September 2015. The Advocates then moved the Court for settlement of terms of sale of the attached property. Those terms of sale by public auction were settled by the Deputy Registrar on 15th January 2016.

4. Joyce Nziza filed an appeal before a Judge against the deputy Registrar's order settling terms of sale. That appeal was struck out by this Court on 17th July 2017. The other clients did not appeal against the Deputy Registrar's order.

5. By an application dated 13th November 2017 all the clients filed an application to file an appeal out of time.

6. The Court by its Ruling of 6th March 2018 granted leave to Joyce Nziza to appeal out of time against the ruling of 17th July 2017 and she was granted 30 days stay of execution. In respect to the other clients the Court by the ruling of the same date declined to grant them leave to appeal out of time.

7. In the light of the above background it becomes clear that Monica Ndunge Mwangela, Connie Mbithe Muia, Mary Musuki Mudachi and Joseph Lomba Mwangela have no right of appeal against the orders of the Deputy Registrar or any other orders issued herein.

2. One of the applications under consideration is a Notice of Motion dated 19.11.2019. By it, Joyce Nziza, Monica Ndunge Mwangela, Connie Mbithe Muia, Mary Musuki Mudachi and Joseph Lomba Mwangela seek leave to file a reference of taxation out of time. It is based on the grounds that the advocate/client bill of costs presented by Amuga & Co. Advocates was filed on 14th January 2014 and it was for Ksh 8 million. The taxing master delivered the ruling on that taxation on 15th January 2015. The client's reference was struck out and judgment was entered for the advocate on 17th July 2017. Joyce Nziza filed an appeal in the court of appeal. The court of appeal by its judgment of 21st June 2019 dismissed the appeal with these words.

“In the final analysis, that facts on records show the appeal and Reference before the High Court were filed outside the prescribed time. The record shows there was no application for extension of time to file the reference before the High Court. From the express provisions of order 49 (7) (3) of the Civil Procedure Rules, find this appeal has no merit and it is hereby dismissed with costs.”

3. Joyce Nzisa by her present application before me seeks that time for filing a reference be extended by this court.

4. Learned advocate Mr Ogado for Joyce Nzisa submitted that a party, such as the applicant, when seeking exercise of discretion in their favour should show:

i. Merit and (ii) that the advocate will not suffer prejudice. He submitted that his client had all along, since 2014, when taxation was done, been represented by advocates who should have sought leave to file a reference out of time. But the fact various applications were made shows that his client was interested in justice. He argued that the bill of costs was erroneously taxed and consequently the taxed amount had an error. The counsel requested this court to pardon the delay of seeking extension to file a reference.

5. There is yet another application filed by Monica Ndunge Mwangela and Connie Mbithe Muia. They seek that judgment, in this case of 23rd February 2015 be set aside. This is the judgment of the taxed costs of advocate/client bill of costs.

6. In short the reason given for seeking that setting aside is because the applicants wish to file a reference. The delay to file the application is attributed to the file missing in April and May 2018. It is submitted that the applicants have always intended to 'dispute' the judgment.

7. I have considered the affidavit evidence and the submissions made before me. The taxation of the advocate/client bill costs was taxed in the year 2015. Parties, in 2019, sought leave to file a reference. The Reference should have been filed within 15 days of taxation. As much as the applicants say that they were lay and did not know how to proceed with the Reference, I find that to wait 4 going to 5 years is far too long. It is prejudicial to the advocate. It is for that reason that both Notice of Motions dated 12th July 2019 and 19th November 2019 are dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 12th day of MARCH, 2020.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie..... **COURT ASSISTANT**

.....**FOR THE PLAINTIFF**

.....**FOR THE 1ST RESPONDENT**

.....**FOR THE 2ND RESPONDENT**

.....**FOR THE 3RD RESPONDENT**

.....**FOR THE 4TH RESPONDENT**

..... **FOR THE 5TH RESPONDENT**