



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

MISC. (REFERENCE APPLICATION) NO. 109 OF 2020

BEDROCK HOLDINGS LIMITED.....APPLICANT

VERSUS

BEDROCK SECURITY SERVICES LIMITED.....RESPONDENT

RULING

1. By a chamber summons dated 24.06.2020 filed on 29.06.2020, brought under the provisions of Paragraph 11 (2) and 13 of the Advocates Remuneration Order, Sections 1A, 1B, and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules, the Applicant seeks the following orders:

- 1) That the Honourable Court be pleased to enlarge time within which to file a reference**
- 2) That costs of this application be in the cause**

2. The motion is premised on the grounds among others that the delay was as a result of the Applicant's office being closed due to the Covid-19 pandemic.

3. The summons is supported by an affidavit sworn on 25.06.2020 by STEPHEN AYUGI ONYANGO, Applicant's in which he reiterates the grounds on the face of the application. Annexed to the affidavit the judgment in **HCCC NO. 133 OF 2009**; ruling on the taxation of the party and party costs in that case in which the bill was taxed at Kshs. 660,315/-.

4. The application is opposed on the basis of a replying affidavit sworn on 10.07.2020 by DAVID OTIENO, ADVOCATE for the Respondent. He contends that the Applicant has never sought reasons for the items in the bill that he is opposed to.

Analysis and Determination

5. I have considered the chamber summons in the light of the affidavits on record, annexures thereto and submissions filed on behalf of the both parties and the cited authorities.

6. Paragraph 11 of the Advocates Remuneration Order which provides THAT:

(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 shall be served on all the parties concerned, setting out the grounds of his objection.

7. The law contemplates a notice in writing within fourteen days after the decision of the Taxing Officer's decision requesting for reasons on taxation of specified items of the Bill of Costs that are objected to, and upon receipt thereof an application commonly referred as a reference to a judge, by way of Chambers Summons setting out the grounds of objection to the taxation.

8. 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. A party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court. (See **Grindlays Bank International (K) Ltd & another v George Barbour [1996] eKLR; Aviation Cargo Support Limited v St. Mark Freight Services Limited [2014] eKLR and Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR**).

9. In the case of **City Chemist (Nbi) & Another V. Oriental Bank Limited Civil Application No. Nai 302 of 2008 (UR 199/2008**, the Court of Appeal had this to say about of extension of time:

“the overriding objective thus confers on the Court considerable latitude in the interpretation of the law and rules made thereunder, and in the exercise of its discretion always with a view to achieving any or all the attributes of the overriding objective. The overriding objective does not however facilitate the granting of orders seeking leave or extension of time to file record of appeal where the applicant has not shown to the satisfaction of the Court that the delay is not inordinate or has been explained to the satisfaction of the Court. In the instant application, the applicant is guilty of inordinate delay and has failed to explain it to the satisfaction of the Court. Consequently, I am unable to exercise my discretion in favour of the applicant as his application lacks merit.”

10. From the abovementioned authorities, it is apparent that the most important aspect of an application for extension of time is that the applicant must satisfy the court that the delay is inadvertent and excusable.

11. Whereas it may have been true that the Applicant’s offices were courts were still operating though with reduced workload and the closure of Applicant’s offices cannot with respect be a reasonable ground for the Applicant not to comply with an express provision of the law.

12. In light of what I have stated above, it is my finding that the delay by the Applicant has not been satisfactorily explained. Accordingly, the chamber summons dated 24.06.2020 filed on 29.06.2020 is unmeritorious and it is dismissed with costs to Respondent.

13. Having said that, the Applicant’s chamber summons dated and filed on 24.07.2020 seeking similar orders as in this cause also stands dismissed.

DATED AT KISUMU THIS 21st DAY OF October 2020

T. W. CHERERE

JUDGE

Court Assistants - **Ms. Amondi/Ms. Okodoi**

For Applicant - **Mr. Mwamu for Mwamu & Company Advocates**

For Respondent - **Ms. Onsongo for Owiti, Otieno & Ragot Advocates**