



**Chaudhri & Associates v Registered Trustees of Sheikh Zayed
Bin Sultan Al- Nahyan (Miscellaneous Application E203 of 2022)
[2023] KEELC 20335 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20335 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E203 OF 2022
MD MWANGI, J
SEPTEMBER 26, 2023**

BETWEEN

CHAUDHRI & ASSOCIATES ADVOCATE

AND

**THE REGISTERED TRUSTEES OF SHEIKH ZAYED BIN SULTAN AL-
NAHYAN RESPONDENT**

RULING

1. What is before me is a notice of motion dated May 30, 2023 by the advocate/applicant seeking leave to file a reference out of time under the provisions of rule 11 of the *Advocates Remuneration Order*, against the ruling of the taxing master, dated April 19, 2023.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Mohamed Ferhan Chaudhri, advocate deponed on the May 30, 2023. The deponent avers that this court has unfettered jurisdiction to grant the applicant leave to file his application for reference pursuant to rules 11 (1) and (2) of the *Advocates (Remuneration) Order*, out of time.
3. He states that the advocate had filed an advocate-client bill of costs dated September 23, 2022 against the client/ respondent seeking costs in the sum of Kshs 16, 974, 396/= . On April 19, 2023, the taxing master dismissed the bill of costs entirely with costs to the respondent.
4. After the said ruling, the advocate/applicant requested the taxing master to furnish him with copies of the said ruling. However, the ruling was only supplied on May 24, 2023. He avers that the advocate is dissatisfied with the decision of the taxing master, and seeks leave to file a reference out of time. He cites the delay in obtaining the ruling for his inability to file the reference within the statutory timelines.



5. He asserts that the advocate/ applicant has reasonable grounds for the intended application for reference which ought to be heard on their merit. No prejudice will be occasioned upon the client/ respondent.

Replying Affidavit

6. The client/respondent in answer to the notice of motion, filed a replying affidavit dated June 3, 2023 by Abubakar Hassan Dindia in which he vehemently denied the claims by the applicant/client. He averred that the reasons for delay in filing a reference on time have not been sufficiently explained.
7. The deponent asserts that the jurisdiction of the court to grant leave to file an application out of time is to be exercised in genuine cases only and should not be to aid an indolent applicant.
8. He asserts that the reasons preferred by the applicant for the delay are not satisfactory. The application is therefore devoid of merit and the applicant is guilty of laches.
9. Further, the respondent argues that the intended reference is devoid of merit because it is mounted on a question of whether there was an advocate-client retainer. The respondent opines that it is very clear that there was no valid and binding agreement and therefore the reference has no chances of success.
10. That in the circumstances, it is just and fair that the application be dismissed with costs.

Court's Direction

11. The court directed that the application be canvassed by way of written submissions. However, none of the parties filed submissions as directed.

Issues for Determination

12. Having carefully considered the application and the response thereof, the sole issue for determination in this matter is whether or not extension of time to file the reference should be granted.

Analysis And Determination

A. Whether or not extension of time under paragraph 11 (1) and (2) and 4 of the Advocates Remuneration Order should be granted.

13. The legal framework on extension of time in matters of advocate-clients bills of costs is clearly stipulated under part 1 paragraph 11 of the [*Advocates Remuneration Order*](#) which provides:

“ 11.

- (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.
- (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (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), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
- (5) 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."

14. The Supreme Court in the Supreme Court in *County Executive of Kisumu v County Government of Kisumu & 8 others* (2017) eKLR pronounced the general criteria for considering applications for extension of time in the following words: -

"it is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the court. Further, this court has settled the principles that are to guide it in the exercise of its discretion to extend time in the *Nicholas Salat case* to which all the parties herein have relied upon. The court delineated the following as:

"the under-lying principles that a court should consider in the exercise of such discretion:

- a. 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;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- f. Whether the application has been brought without undue delay; and
- g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."

15. Justice F. Gikonyo in the case of *Mwangi S. Kimenyi v Attorney General and another* (2014) eKLR correctly observed that what constitutes 'inordinate delay' is dependent on the particular circumstances of each case. He stated that:

"There is no precise measure of what amounts to inordinate delay. Inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the



case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable. Caution is, however, advised for courts not to take the word “inordinate” in its dictionary meaning, but to apply it in the sense of excessive as compared to normality.....see the case of *Allen v Alfred McAlphine & Sons* [1968] 1 All ER 543 where a delay of fourteen (14) years was considered inordinate and inexcusable. But see also the cases of *Agip (Kenya) Limited v Highlands Tyres Limited* [2001] KLR 630 and *Sagoo v Babari* [1990] KLR 456, where delay of eight months and five (5) months respectively was considered not to be inordinate and also ELC Case No 2058 of 2007 where delay of about 1½ years was considered not to be inordinate.”

16. In the instant application, the ruling in respect of the taxation of the advocate’s bill of costs was delivered on April 19, 2023. The current application is dated May 30, 2023 seeking leave to file a reference out of time.
17. Paragraph 11(4) of the *Advocates (Remuneration Order)* clearly grants this court the discretion to enlarge time for filing a reference.
18. The applicant avers that the reason for the delay in filling the reference was that despite requesting for a copy of the ruling *vide* the letter dated April 19, 2023 he only received a copy of the same on May 24, 2023.
19. I note that the advocate/applicant filed the notice of objection to the taxation on May 3, 2023. This was within the 14days statutory period.
20. In the matter of *Gerphas Alphonse Odhiambo v Felix Adiego* (2006) eKLR the learned judge of appeal found that: -

“no matter how small the period of delay, one should have an explanation for it.””
21. As stated in the above cases the length of the delay and reasons for non-compliance of the time lines are important factors to influence the exercise of discretion of the court. Inordinate delay will differ from case to case depending on the circumstances of each case.
22. In the circumstances of this case, the court’s finding is that the delay was not inordinate. In addition, the applicant in his affidavit has sufficiently explained the reasons for the delay. The court therefore finds in favor of the applicant.
23. In view of the foregoing and the reasons given in this application, it is my finding that the application dated May 30, 2023 has merit. The same is allowed in the following terms:
 - a. The applicant is hereby granted leave to file a reference out of time for review of the ruling on the bill of costs dated April 19, 2023 within the next fourteen (14) days from the date hereof.
 - b. The costs of the application shall be in the course.

It is so ordered.

DATED SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2023.

M. D MWANGI

JUDGE



In the virtual presence of:

Mr. Bruno for the Advocate/Applicant

Mr. Kichweu for the Respondent

Yvette: Court Assistant.

M. D MWANGI

JUDGE

