



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL (REFERENCE) NO.607 OF 2011

TAJ MALL LIMITED.....APPELLANT/RESPONDENT

VERSUS

TAJ VILLAS MANAGEMENT LIMITED.....RESPONDENT /APPLICANT

RULING

Before the court for determination, is the Chamber Summons dated the 13th day of November 2018 by the Respondent/Applicant seeking for orders that; the court enlarges the time within which to file a reference against the decision of the taxing officer delivered on 4th day of June 2018 and that the notice of objection filed herein together with this application be deemed as properly filed though out of time.

The application is premised on the grounds set out in the body of the same and it's supported by the affidavit sworn by STEPHEN OWINO on the 13th day of November 2018.

In the supporting affidavit it is deponed that the matter emanated from a judgment that had been passed by the Court of Appeal in Civil Appeal No. 112/2017 on 19th January 2018, where he had appealed against the decision of this Honourable Court in these proceedings and the Appeal was allowed.

That, following the judgment by the Court of Appeal, Counsel for the applicant filed a Bill of costs for taxation against the Respondent but on 4th June 2018 the court made a ruling dismissing the applicant's Bill of Costs for reasons *inter alia* that the Court of Appeal Judgment had made pronouncements that each party was to bear its own costs.

The deponent avers that the ruling was made through a mistake on the part of the court in appreciating the order made by the Court of Appeal in Civil Appeal No. 112 of 2017 which was an error apparent on the face of the record. That the applicant filed a review under Order 45 of the Civil Procedure Rules 2010 on the 12th day of June, 2018 but withdrew the same on the 17th October 2018 for being defective for want of form which review, upto the time of withdrawal, was unopposed hence the replacement of the same by the reference herein will cause no prejudice to the Respondent herein.

It is further averred that the applicant has already prepared the Notice to the Taxing Officer laying down it's objections to her ruling delivered on the 14th June 2018. He averred that the court has powers to review, vary and/or set aside the impugned decision. He prays that the court do review the ruling.

The court has considered the application. The same is not opposed and the Respondent neither attended court during the hearing of the application nor did he file a response to the same and therefore the same proceeded *ex parte*.

The application is brought under Rule 11(2) and (4) of the Advocates Remuneration order, among other provisions. The applicant has sought leave of the court to enlarge time within which to file a reference against the taxing master's ruling delivered on 4th June, 2018. Though a copy of that ruling is not annexed to the affidavit, what the court can gather is that the ruling dismissed the applicant's Bill of Costs for reasons which the applicant thought were not tenable and which according to him, amounted to an error apparent on the face of the record. He filed an application for review which he later withdrew for being defective for want of form.

He now wishes to file a reference against that decision and since the time within which to do so has run out, he has sought for extension of time to file the reference and notice of objection.

The court finds that the application has merits and it is allowed as prayed. The applicant is granted leave to file a reference and to give notice of objection out of time. The same to be done within 14 days from today.

Costs in the cause.

Dated, Signed and Delivered at Nairobi this 30th day of January, 2019

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L. NJUGUNA

JUDGE

In the presence of:-

.....**For the Appellant/Respondent**

.....**For the Respondent/Applicant**