



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO 99 OF 2018

BETWEEN

REPUBLIC.....APPLICANT

AND

THE LAND ADJUDICATION OFFICER BONDO, SIAYA & BUSIA.....RESPONDENT

PELESIA ADHIAMBO.....1ST INTERESTED PARTY

JARED GILO.....2ND INTERESTED PARTY

RULING

1. By a chamber summons dated 10th March, 2018 and filed on 07th June, 2018, 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 Applicant is dissatisfied with the taxed sum and that the reference has a high chance of success.

3. The summons is supported by an affidavit sworn on 06th June, 2018 by JAMES AGGREY MWAMU in which he reiterates the grounds on the face of the application. Annexed to the affidavit is Taxing Master's ruling (**JAM-1**) dated 15th September, 2017 in which the Bill of Costs was taxed at Kshs. 65,810/-.

4. The application is opposed on the basis of a replying affidavit sworn on 26th June, 2016 by JUDE RAGOT, ADVOCATE for the 2nd Interested Party. The deponent contends that this application is an afterthought and has been prompted by the Interested Party's demand for a refund of Kshs. 25,190/- being the extra sum paid on the re-taxed costs. Annexed to the affidavit is court's ruling (**JR/1**) dated 28th October, 2015 which directed that the bill of costs initially taxed at Kshs. 91,000/- be re-taxed and three demand letters marked **JR/2** and **3** addressed to M/S Mwamu & Company Advocates for refund of Kshs. 25,190/- being the extra sum paid on the re-taxed costs.

5. In a further affidavit sworn on 24th September, 2017 and filed on 27th September, 2017, JAMES AGGREY MWAMU deposes that the delay in filing the reference was occasioned by failure by his client to respond to his request for instructions contained in an undated letter marked **JAM-1**.

Analysis and Determination

6. I have considered the chamber summons in the light of the affidavits on record, annexures thereto and submissions filed on behalf of the Interested Party and the cited authorities.

7. 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.

8. 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.

9. The Taxing Master's ruling (**JAM-1**) re-taxing the Bill of Costs at Kshs. 65,810/- was delivered on 15th September, 2017. This application was filed on 07th June, 2018 which is over 15 months from the date of the impugned ruling.

10. 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**).

11. 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 whilst addressing the issue of extension of time to file the record of appeal stated: -

“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.”

12. 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. The letter marked **JAM-1** that the Applicant's counsel allegedly wrote seeking his client's instruction is not dated and it has not been demonstrated that it was delivered to the client. Further to the foregoing, it has not been demonstrated when the client gave instructions to have this application filed nor has the client sworn an affidavit to explain its failure to give instructions on time.

13. In light of what I have stated above, it is my finding that the delay was inordinate and has not been satisfactorily explained. Accordingly, the chamber summons dated 10th March, 2018 and filed on 07th June, 2018 is found to have no merit and it is dismissed with costs to the 2nd Interested Party.

DELIVERED AND SIGNED IN KISUMU ON THIS 27TH DAY OF JUNE 2019

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For the Applicant -Ms. Adwar

For the Respondent -N/A

For the 1st Interested Party -Ms.Onsongo hb for Mr. Ragot

For the 2nd Interested Party -N/A