



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**MISC. P/A APPLICATION NO.10 OF 2018**

**IN THE MATTER OF W. K. Ngenoh t/a W. K. NGENOH**

**LESSAN & CO. ADVOCATES.....RESPONDENT/APPLICANT**

**VERSUS**

**JOSEPH KIPSIGEI BEIGON.....APPLICANT/1<sup>ST</sup> RESPONDENT**

**GEOFFREY KIPRON YEGON.....APPLICANT/2<sup>ND</sup> RESPONDENT**

**Suing as legal representatives in the estate of the late**

**KIPYEGON SANG ALIAS KIBIEGON ARAP SANG**

**RULING**

1. Before me is an application dated 7<sup>th</sup> August 2018 filed under Rule 11 (4) of the Advocates (Remuneration) Order (Cap.16) and section 3 and 3A of the Civil Procedure Act (Cap.21). The substantive prayer is for this court to enlarge time within which to allow the applicants to file a reference to the objection of the Bill of Costs.
2. The application has grounds that the Bill of Costs was taxed in breach of an agreement entered into between the applicant (clients) and respondent (advocate). That the respondent then proceeded to apply for execution of decree vide application dated 27/7/2018 and that the applicant would suffer irreparable loss if the decree is executed.
3. The application is supported by the affidavit of Geoffrey Kiprono Yegon (one of the applicants) sworn on 7<sup>th</sup> August 2018-giving the genesis of the matter and stating that the delay in filing a reference to challenge the taxation was not intentional, as the applicant had all along thought that fees was fixed and agreed between himself and his advocate.
4. In response, the respondent filed a replying affidavit sworn on 14<sup>th</sup> November 2018 by W. K. Ngeno advocate in which it was deponed that this application was an afterthought after taxation had been done on 20<sup>th</sup> June 2018 and execution had commenced; and that the agreement relied upon by the applicants on costs of kshs.100,000/- was that such amount would remain only as a deposit for succession costs, and that the taxing officer was in fact lenient to tax the bill at Kshs.6,120,333/- for a bill presented for kshs.1,472,542/-.
5. Parties counsel filed written submissions to the application, and opted to adopt the same without highlighting. Many issues have been canvassed in the written submissions filed, which in my view go into the merits of the decision of the taxing master, which I am not required to deal with in an application for enlargement of time.
6. In such an application as the present, I have to consider the duration of the delay in not filing the reference, and the underlying reasons for the delay not the merits of the decision of the taxing officer which will be considered by the Judge who will handle the reference.
7. The main reason of the delay in filing the reference as given by the applicant is that though his counsel M/s Obondo Koko & Company advocates requested the taxing master for reasons for the decision by a letter dated 20<sup>th</sup> June, 2018, same were not provided, thus causing the delay in filing the reference which was not intentional.
8. I note that this present application has been pending since its filing in June, 2018 which is more than a year now; which period is longer than the delay actually caused by the applicant before filing the same, who filed this application on 9<sup>th</sup> August, 2018.

9. Thus in the interest of justice therefore, and in the spirit of Article 159 (2) of the Constitution of Kenya, 2010 that courts should be inclined more on administering substantive rather than technical justice, I will allow the application for enlargement of time, which will enable all the parties have their day in court and will enhance the application of substantive justice. I will however give a time frame for the reference to be filed.

10. Consequently, I thus allow the application for enlargement of time and order that the reference will be filed within 30 days from the date of this ruling, failure to which this extension of time will lapse. The costs of this application will be in the cause if the reference is filed within 30 days. If not, then the applicant herein (client) will pay the costs of the respondent (advocate) in this application.

**Dated at Kericho this 24<sup>th</sup> day of September, 2019.**

**GEORGE DULU**

**JUDGE**