



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 183 OF 2017

FLAGSHIP INSURANCE BROKERS LIMITED.....APPLICANT

VERSUS

MURI MWANIKI & WAMITI ADVOCATES..... RESPONDENT

RULING

- 1) The subject matter of this ruling is the summons dated 12th February, 2018 taken out by Flagship Insurance Brokers Ltd, hereinafter referred to as the client/applicant. In the aforesaid summons, the client/applicant sought for inter alia an extension of time to file an objection and or reference and for leave to file an objection out of time.
- 2) The client/applicant filed the affidavit of Nancy Karanu in support of the summons. When served with the summons, Muri Mwaniki & Wamiti Advocates, the advocate/respondent, filed the replying affidavit of Martin M. Mwaniki to oppose the application.
- 3) When the summons came up for hearing, learned counsels appearing in this matter recorded a consent order to have the summons disposed of by written submissions. I have considered the grounds stated on the face of the summons and the facts deponed in the affidavits filed in support and against the application.
- 4) I have also considered the rival written submissions. The client/applicant beseeched this court to grant it the orders sought arguing that its failure to file the objection and reference in time was caused by an honest excusable mistake on the part of the applicant's advocates and due to other reasons its beyond control.
- 5) The applicant stated that the taxing officer delivered a ruling on the 17th day of May 2018 and on 27th May 2018 the applicant's advocate wrote to court seeking for a copy of the ruling and the reasons for the ruling. It is also stated that the reasons and ruling were supplied on 12th June 2018. It is alluded that there was a miscommunication between the client and the advocate's office which caused the delay in filing of the notice of objection. It is said that the client/applicant was dissatisfied with the ruling since the legal fees had been agreed upon and that there was an agreement on fees. The taxing officer however found that there was no agreement on fees by both parties.
- 6) The advocate/respondent urged this court to dismiss the summons because the ruling was clearly titled "**Ruling and reasons for taxation**" and therefore the reasons were contained in the ruling. It is argued that the client went to slumber after the ruling and therefore an inference should be made that the client/applicant had lost interest in the matter and is only out to frustrate the respondent from enjoying the fruits of his judgement.
- 7) The advocate/respondent also pointed out that the client/applicant has failed to provide good reasons to justify the delay to enable this court exercise its discretion in its favour.
- 8) Having considered the material placed before this court and the rival submissions, it is not in dispute that the decision on taxation was delivered on 17th May 2018. It is also not in dispute that the ruling is titled "**Ruling and Reasons for taxation**". It would appear that the ruling contained the reasons the decision was based thus satisfying the provisions of paragraph 11(1) of the Advocates Remuneration Order. This ruling was self encompassing.
- 9) In the case of **Ahmednasir Abdikadir & Co. Advocates vs National Bank of Kenya Ltd (2) (2006) 1E.A 5 Ochieng J**, held

inter alia:

“Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the

considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of subrule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling,..... Therefore the reference having been filed way out of the period prescribed should have been dismissed but having been given due consideration in substance, the same is dismissed.

10) The client/applicant was therefore required to file its objection to the taxation within 14 days from the date of receipt of the ruling which contained the reasons for the award on each item. The ruling was delivered on 17.5.2018 and the application seeking for extension of time was filed on 12th February 2019, a delay of about 9 months. The applicant has not given plausible reasons why it delayed to file the application. The applicant merely stated that there was a miscommunication between it and the office of its advocate. The statement is bare and sweeping. The delay to being the current application is therefore not explained hence it is not excusable.

11) In the end I find no merit in the summons. The same is dismissed with costs being awarded to the advocate/respondent.

Dated, signed and delivered at Nairobi this 25th day of October, 2019.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent