



Kenya Wildlife Service v Musinga & Company Advocates (Miscellaneous Application 21 of 2022) [2023] KEELC 21668 (KLR) (16 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS APPLICATION 21 OF 2022
EK MAKORI, J
NOVEMBER 16, 2023**

BETWEEN

KENYA WILDLIFE SERVICE APPLICANT

AND

MUSINGA & COMPANY ADVOCATES RESPONDENT

RULING

1. The application is dated 4th April 2023 significantly seeks:
 - i. Stay of execution of Certificate of Taxation issued on 22nd February 2023.
 - ii. This court enlarges the time within which to appeal against the taxation ruling.
 - iii. The Reference filed herein be deemed properly filed.
 - iv. The court does re-tax the Bill of Costs, dated 25th April 2022 afresh.
 - v. This Court varies/or sets aside the Deputy Registrar's ruling dated 20th December 2022 concerning the Applicant's Bill of Costs dated 25th April 2022.
 - vi. Costs be provided for.
2. The application is founded on the affidavit of Alexander Wokabi deposed on 4th April 2023.
3. The application is opposed. There is a Replying Affidavit deposed by one Lily Musinga and grounds in opposition both dated 19th May 2023.
4. The applicant averred that the current Bill of Costs was taxed and a ruling was delivered on 20th December, 2023. A certificate of costs has been extracted with the potential of execution being commenced.



5. The applicant stated that the advocate handling the matter was transferred to a different station. It was until 10th March 2023 that the applicant was served with the Certificate of Costs.
6. The applicant contended that according to the ruling, the taxing master specifically erred and made an excessive award on the bill in item 1 on instruction fees.
7. The applicant further submitted that it would be in the interest of justice that the current application is allowed to safeguard public money being paid out of public coffers to the detriment of the state entity and therefore shielding the common good.
8. The respondent stated that the applicant herein has not satisfied the threshold of granting leave to appeal out of time. The application is not merited. It has not met the threshold as laid in the case of *Stecol Corporation Ltd vs Susan Awuor Mudemb* [2021] eKLR. Period of delay, the reasons for the delay the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance amongst other reasons have not been explained.
9. On the exercise of discretion, the respondent has cited the case of *Apungu Arthur Kibira v IEBC & 3 Others* [2019] eKLR. That the Court should exercise discretion judiciously. This is not one of the cases to exercise discretion in favour of the applicant because Paragraph 11 of the *Advocates Remuneration Order* Cap 16 has given timelines within which to appeal. The timelines were never adhered to.
10. Issues to determine in this matter is whether this Court should grant leave to appeal out of time. In addition, whether this Court should admit the Reference filed, vary the orders in taxation by the Taxing Master, and re-tax the bill afresh.
11. The test on what to consider in allowing an application to appeal out of time is reiterated by Aburili J. in the case of *Stecol Corporation Ltd vs Susan Awuor Mudemb* [2021] eKLR:

“I will therefore entirely rely on the above binding Court of Appeal decision in determining the merits of this application which is two pronged namely: - whether the prayer for extension of time is merited and whether this court can validate an appeal which was filed out of time.

17. Under Section 79G of the *Civil Procedure Act*:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.”[Emphasis added].

18. The Court of Appeal in the above Case guided that whenever an application for extension of time is before a court, the court ought to take into account



several factors as observed by Odek JJA in *Edith Gichungu Koine Vs Stephen Njagi Thoithi* [2014]eKLR thus:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decision of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

12. The ruling in this matter was delivered on 20th December 2022. This date was taken in open court. It averred that the in-house lawyer transferred to another station. This made the law firm fail to reckon that the taxation ruling had already been delivered until a Certificate of Taxation was served on 10th March 2023. The current Chamber Summons was filed on 17th April 2023 - a month later. The current application was lodged four months late. Rule 11(1) of the *Advocates Remuneration Order* stipulates that any party, who wishes to object to the decision of the Taxing Master, 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. This did not happen. The reason for the delay is stated to be a transfer of Counsel handling the matter to another station. This is not reason enough. If it could have been the reason, after obtaining the Certificate of Costs, it would not have taken another month to bring up this application. On that ground, the application ought to fail.
13. Whether this Court should admit the Reference filed, vary the orders in taxation by the Taxing Master, and re-tax the bill afresh - it follows that there is nothing to admit to hearing because leave to appeal has not been granted.
14. The upshot is that the application dated 4th April 2023 is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 16TH DAY OF NOVEMBER 2023.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Okoko for the Respondents

Court Clerk: Happy

In the Absence of:

Mr. Wokabi for the Applicants

