



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. APPLICATON NO. 163 OF 2011**

**HARI GAKINYA T/A**

**HARI GAKINYA & CO. ADVOCATES..... APPLICANT/RESPONDENT**

**-VERSUS-**

**RIFT VALLEY AGRICULTURAL**

**CONTRACTORS LIMITED ..... RESPONDENT/APPLICANT**

**RULING**

The chamber summons dated 18/12/2013 was filed by Rift Valley Agricultural Contractors Ltd against the respondent, Hari Gakinya T/a Hari Gakinya & Co. Advocates. The applicant seeks prayer 3 and 4;

**(3) That the court be pleased to extend time within which the applicant, shall give notice of objection to the taxing master on the decision made on the 02/03/2012 and the time within which the taxing master shall give reasons for her decision.**

**(4) That the court be pleased to extend time within which the respondent /applicant shall set the grounds of objection to the decision of the taxing master made on the 02/03/2012.**

The application is premised on grounds found on the face of the application and the affidavit of Benson Thiru Karanja, a director of the applicant company. The grounds are to the effect that the costs assessed on 2/3/2012 are outrageous and prejudicial to the applicant in that the decision was not informed by law or principles of taxation; That the applicant had instructed the firm of Gordon Ogola & Associates to act for it with instructions to oppose the bill of costs; That the costs were assessed without the applicant being allowed a chance to oppose the bill; that the Advocate did not represent the applicant by failure to file an objection within the stipulated time nor did he request for reasons for the decision from the taxing officer; That the applicant only came to learn of the costs on 11/11/2013 when served with a certificate of sale by auctioneers for execution of Kshs.259,244/50. The applicant contends that this being mistake on part of; counsel, it should not be visited on the applicant.

The application was opposed through the affidavit of Hari Gakinya Advocate. He deposed that the costs are not outrageous or prejudicial to the applicant; that the impugned decision is informed by the law; that the applicant was served with notice of taxation on 31/1/2012 and a notice of objection was filed on 5/3/2012 but applicant's counsel never followed it up. It is also the respondent's contention that the applicant has taken the matter casually, has been indolent and unwilling to pay for the services rendered to them by the respondent. He urged the court to decline to grant the orders because it is applicant is a ploy to delay payment; That the bill was taxed on 2/3/2012 and it is not until 15/12/2013 that this application was made about a month later. There has been inordinate delay in bringing this application unless a plausible explanation is given.

Under Rule 11 of the Advocates Remuneration Regulations, if a party wishes to object to the decision of the taxing officer, he may do so within 14 days after the decision is made by giving notice in writing to the taxing officer of the items of taxation which he objects to. The costs were assessed on 2/3/2012. The applicant was then represented by the firm of Gordon Ogola & Co. Advocates. The said firm of Advocates was served with the notice of taxation on 31/1/2012. That fact is not denied. The said firm did not attend the court on the date the assessment was done. The said counsel was made aware of the

decision of the taxing officer and did file a notice of objection dated 5/3/2012 but that is as far as that counsel went. If the taxing officer did not give reasons for his decision within 14 days then, the applicant or his advocates should have moved this court to challenge the said assessment. It was not until the applicant was served with notification of sale on 11/11/2013, that he immediately moved to this court seeking an order of stay of execution and time to file objection with a view to challenge the taxed costs. There has been a delay of over 1 ½ years.

Under Rule 11(4) of the Advocates Remuneration Regulations, this Court has the discretion to extend the time for challenging the decision of the taxing master. However, the applicant has to justify the delay and the court must exercise its discretion judiciously so as not to prejudice any party. No explanation has been offered as to why the applicant's counsel did not move the court as required. There is no evidence to show that the applicants of themselves tried to find out what had become of this bill now that there is evidence on record that there were several bills that were filed by Gakinya Advocates against the applicant being costs for services rendered. The applicant cannot invoke and find refuge in the provisions of section 3A of the Civil Procedure Act or Article 159 of the Constitution when it is the applicant who has been indolent. The applicant having been aware of the decision and did nothing about it, and if indeed the applicant has suffered any prejudice, they have recourse from their advocate. There being no reasonable explanation given for the delay for 1 ½ years, this Court declines to exercise its discretion in favour of the applicant. The application dated 18/12/2013 is hereby dismissed with costs to the respondent.

**DATED and DELIVERED this 24<sup>th</sup> day of June, 2014.**

**R. P. V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Otieno for the applicant

Mr. G. Chege holding brief for Mr. Gakinya for the respondent

Kennedy – Court Assistant