



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APPL.NO 355 OF 2012

IN THE MATTER OF ADVOCATES ACT, CAP 16 LAWS OF KENYA

IN THE MATTER OF TAXATION OF COSTS

BETWEEN

MAREKA & COMPANY ADVOCATE..... ADVOCATE/PLAINTIFF

AND

ZEKHEM CONSTRUCTION (KENYA).....CLIENT/RESPONDENT

RULING

The application before this Court is a Chamber Summons application dated 27th May 2014, brought under Paragraph 11 (4) of the Advocates (Remuneration) Order. The applicant seeks that time limited for filing Notice of Objection under paragraph 11(2) of the Advocates Remuneration Order. The application is supported by the affidavit of Gad Otieno Ouma. He depones that he has the conduct of this matter on behalf of the advocate/applicant; that their Court clerk inadvertently failed to diarize the ruling date for the taxation leading to nonattendance on the date for delivery; that on the 5th of May 2014 he inquired from the clerk about the said ruling as he had been away on leave from 1st April 2014 and reported back on the same date; that when he noticed the nonattendance for the ruling he contacted one Muthoni and associate at M/s Issa and Company Advocates for the client respondent to supply him with a copy of the ruling and she did so on the 6th of May 2014; that he had no notice of the aforesaid ruling hence the reasons the notice objection was not filed on time. The applicant has sought the Court's discretion to be allowed to file the objection out of time.

The application was opposed. In a replying affidavit dated 25th June 2014, M/s Muthoni Mugo an advocate with the firm of Issa and company advocate depones that; the ruling on the bill of cost was reserved for delivery on the 31st May 2014 and the ruling was given in the presence of both advocates; that the firm of the Advocate/Applicant was aware as she contacted Mr. Ouma who not present who informed her that he was on leave but he had sent a representative of the firm to attend court and therefore it is not true that they were not aware of the ruling date; that the indolence of the counsel should not be a ground for the Court to exercise its discretion; that it is noteworthy that the applicants obtained a copy of the ruling 36 days after delivery and the applicant has taken inordinate amount of time to file the instant application which disentitles him from any discretion relief; that the ruling delivered was typed and the applicant has not annexed a draft application demonstrating any error of principle on the part of the taxing officer and lastly the application lacks merit.

Counsels made oral submissions. The respondent relied on the following authorities, The Advocates Act & Remuneration Order, the case of *Kissi Petroleum Products Ltd Vs. Kobil Petroleum Limited Civil application No: NAI 281 of 2005*, the case of *Onalo & Company Advocates Vs. Export Processing Zone (2006) EKLr*, The case of *Republic Vs. Laikipia District Land Dispute Tribunal & 3 Others (2006) eKLR*, the case of *Kwengu & Company Advocates Vs. Invesco Assurance Company Ltd (2014) eKLR* and the case of *Amuga & Company Advocates Vs Arthur Githinji Maina (2013) eKLR*.

In a ruling cited by the Respondent the case of *Amuga & Company Advocates Vs Arthur Githinji Maina (2013) eKLR (supra)*, this Court cited the case of *Obanga and Company Advocate Vs. Kipkebe Limited and Jerusa Wairimu Kamau Vs. Josephat Mburu Munthi* where it was held *that an application for extension of time was discretionary. That in considering such an application, the length of the delay, the reason for delay, the chances of succeeding if the application is granted and finally the degree of prejudice to the respondent if the application is granted are considered.*

Section 11 (4) of the Advocates (Remuneration) Order provides that the High Court shall have power in its discretion by order to extend the time fixed in sub paragraph (1). Sub paragraph 1 states that should a party object to the decision of a taxing officer he may within 14 days after decision give notice in writing to the taxing officer of the items of taxation to which he objects. In this case the applicant states that they received the ruling from their counter parts after they failed to attend the ruling date. In considering whether to extend time I have considered that the length of time taken in filing the application. The applicant received the ruling on the 6th of May 2014 and filed this application on the 27th of May 2014. The ruling was delivered on the 31st of March 2014. Each case is determined on its own merit. The delay in filing this applicant is two months, it was not inordinate. Counsel has admitted his mistake. Though the applicant has not filed a draft reference to enable this court consider their grounds, I will exercise my discretion in their favour. Further, no prejudice shall be caused to the Respondent in that the Court will consider the reference and give a ruling on the taxing master's ruling from a taxation that arose from arbitration award. The applicant shall file a Notice of Objection within 14 days from the date of this ruling. Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 17th Day of October 2014.

R. E OUGO

JUDGE

In the presence of:

..... **Advocate/Applicant**

..... **Client/Respondent**

..... **Court Clerk**