



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Case 748 of 2007

**MURIU MUNGAI & CO.....ADVOCATES/
APPLICANT**

VERSUS

**NEW KENYA CO-OPERATIVE CREAMERIES
LIMITED.....CLIENT/RESPONDENT**

RULING

By an application dated 20th May 2008 and brought by way of Chamber Summons taken out **under paragraph 11(4) of the Advocates (Remuneration) Order**, the Applicant seeks from the court orders that-

- 1. The time limited for filing a Notice of Objection under paragraph 11(2) of the Advocates (Remuneration) Order be enlarged.**
- 2. The Notice of Objection dated 9th April 2008 and filed on 10th April 2008 be deemed as duly filed within such enlarged time.**
- 3. The costs of this application be in the cause.**

The application is supported by the annexed affidavit of David Mukii Mereka, and is based on the following grounds that-

- (a) That the Advocates for the Client/Respondent had no notice of ruling date for the taxation and became so aware long after the 14 days, time limited for filing a Notice of Objection provided for filing a Notice of Objection had lapsed.**
- (b) That the failure to file the Notice of Objection herein within the prescribed period was unpremeditated, inadvertent and excusable.**
- (c) That in the interest of justice, the orders sought herein ought to be granted.**
- (d) That the Advocates/Applicant will not suffer any prejudice that cannot be compensated by an appropriate order for costs if the orders sought here are granted.**
- (e) That this application has been presented to court without undue delay.**

The Respondents did not file any replying affidavit or grounds of opposition. It is the applicant's case

that the ruling in question was not delivered on the scheduled date. The Applicant has shown in the supporting affidavit that indeed, efforts were made to know when the ruling would be delivered even after the scheduled ruling date was put off. It is further the applicant's case that there was no indication by way of notice or otherwise when the ruling would be delivered. The applicant deposed that, when the ruling was actually delivered, it was delivered in the absence of the parties. I am persuaded that the applicants made reasonable efforts to know the date and outcome of the ruling, and that their failure to file an objection in time was occasioned by the lack of notice of the said date. In the circumstances, it is my humble view that the application is merited.

For the above reasons, and in the interest of justice and fairness, I accordingly order that-

- 1. The time limited for filing a Notice of Objection under paragraph 11(2) of the Advocates (Remuneration) Order be and is hereby enlarged for 14 days as prayed.**
- 2. That the Notice of Objection dated 9th April 2008 and filed on 10th April 2008 be deemed as duly filed within such enlarged time.**
- 3. The costs of this application be in the cause.**

It is so ordered.

L. NJAGI

JUDGE

DATED and DELIVERED at NAIROBI this 20th day of November, 2012

**MUTAVA
JUDGE**