



**Ndeti & another (Legal Representatives of the Estate of Idah Ndeti) v Ndeti
(Legal Representatives of the Estate of Kituto Ndeti) & 4 others (Environment
& Land Case 130 of 2019) [2022] KEELC 3314 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3314 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 130 OF 2019**

**A NYUKURI, J
JULY 27, 2022**

BETWEEN

**ESTHER NGONDU NDETI 1ST PLAINTIFF
ALEX KIILU NDETI 2ND PLAINTIFF
LEGAL REPRESENTATIVES OF THE ESTATE OF IDAH NDETI**

AND

**CECILIA SITUMAI NDETI 1ST DEFENDANT
MICHAEL KYENDE NDETI LEGAL REPRESENTATIVES OF THE ESTATE OF
KITUTO NDETI 2ND DEFENDANT
KIVUSIT HOLDINGS LIMITED 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. Vide an application dated 25th May 2021, the 1st, 2nd and 3rd Defendants/Applicants sought for the following orders;
 - (a) Spent.
 - (b) That the time within which the 1st, 2nd and 3rd Defendants can lodge a reference in respect of the Taxing Master's ruling delivered on 12th May 2021 be extended for a further thirty (30) days.



- (c) That in the alternative to prayer 2 above, the 1st, 2nd and 3rd Defendants be granted leave to lodge a reference in respect of the taxing master's ruling delivered on 12th May 2021 out of time and in any event within thirty (30) days from the date of the order.
- (d) That the costs of the application be in the cause.
2. The application is premised on the affidavit sworn by Stephen Kipkorir Bundotich on 25th May 2021. The 1st, 2nd and 3rd Defendants/Applicants' case is that the taxing master delivered her ruling in the bill of costs herein, which was not typed and that the Advocates for the Applicants requested for reasons of the decision in time. They further averred that they were yet to be supplied with the reasons for the taxing master's decision.
3. The application is opposed. The Plaintiffs/Respondents filed grounds of opposition dated 2nd November 2021 in opposition to the Application. It was the Respondent's contention that the application is bad in law, incompetent and fatally defective, and that no reasons have been given for the delay or failure to file a reference in time. Further, the Respondent observed that the decision of the taxing master contained her reasons thereof, hence it is not expected that the said reasons are to be provided in a separate ruling. His argument being that there was an inordinate delay in filing the application which delay has not been explained.
4. The application was canvassed by written submission and on record are the Applicants' submissions filed on 17th December 2021 as well as the Respondents' submissions filed on 14th January 2022, both of which the court has considered.

Analysis and Determination

5. I have considered the application together with the supporting affidavit as well as grounds of opposition and submissions. The sole issue that arises for determination is whether the Applicant is entitled to the orders sought.
6. The court has discretion to extend time where the ends of justice so demands. Section 95 of the *Civil Procedure Act* provides as follows;
- “Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”
7. Order 50 Rule 6 of the *Civil Procedure Rules* provide for enlargement of time as follows;
- “where a limited time has been fixed for doing any act or taking any proceedings under these rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.
8. It is clear therefore that this court has discretion to extend time for doing any act on terms as the justice of the case may require; and such discretion must be exercised judiciously.



9. In the case of *County Executive of Kisumu vs County Government of Kisumu & 8 others* SC Civil Appl. No. 3 of 2016 [2017] eKLR, the court held that there is need for an applicant in an application for extension of time to satisfactorily declare and explain the whole period of delay to the court.
10. In the instant matter, the Applicants explained that the decision of the taxing master was made on 12th May 2021 and that the same was not typed. They also stated that they sought for reasons of the said decision but the same were not forthcoming. In the rebuttal, the Respondents argued that there was no need for the taxing master to render reasons for her decision as the same were given in the ruling.
11. Paragraph 11 of the *Advocates (Remuneration) Order* provides for the period within which an objection to the decision on taxation may be made as follows;
 - (i) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 - (ii) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 - (iii) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (iv) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other Interest Party not less than three clear days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
12. From the explanation given by the Applicants, it is clear that they sought for reasons for the taxing master's decision *vide* their letter dated 12th May 2021. As the decision of the taxing master was made on 12th May 2021, the Applicant had 14 days to give notice in writing to the taxing officer of the items of taxation to which he objects. It is upon this notice that the taxing officer records and forwards to the objector the reasons for his/her decision on the objected items. Upon receipt of reasons, the objector may apply by chamber summons to a judge, stating grounds of his objection.
13. This court has power under subparagraph 4 of Paragraph 11 of the *Advocates (Remuneration) Order* to enlarge time for giving notice of objection to the taxing officer on specific items objected to. The court also has power to extend time for filing objection to a judge.
14. The Applicants attached annexure SKB1 to their application herein which is a letter dated 12th May 2021. The same states as follows;

“The Deputy Registrar

Environment and Land Court

Machakos

Dear Madam

Re: Machakos ELC No. 130 of 2019



Esther Ngundu Ndeti & Another vs. Cecilia Situmai Ndeti & Others

We act for the 1st, 2nd and 3rd Defendants in the above suit.

Kindly furnish us with a copy of the Taxing Master's ruling delivered on 12th May 2021. Also let us know the reasons for the taxing master's findings.

Yours faithfully,

For: Kale Mauna & Bundotich Advocates

S. K. Bundotich”

15. It is clear that the letter of 12th May 2021 was not a notice of objection upon which the Deputy Registrar could give reasons for her decision as no specific items were stated to have been objected to. The Applicants have sought for extension of time to lodge a reference in respect of the taxing masters ruling delivered on 12th May 2021. No application for extension of time for giving Notice of Objection has been made and no reasons have been given why there is no Notice of Objection filed to date. It appears, the Applicants are only interested in leave to file a reference out of time.
16. In my considered view, failure to lodge a Notice of Objection which must specify the items objected to, means that the intended reference will have no basis as the Applicant will have denied the taxing officer an opportunity to give reasons for his/her decision, which would ordinarily form the basis and reference point for the judge in the determination of the chamber summons filed under paragraph 11 subparagraph (2) of the *Advocates (Remuneration) Order*. A blanket request for reasons of the ruling as sought in the Applicants' letter of 12th May 2021 does not amount to a Notice of Objection envisaged under paragraph 11 (1) of the *Advocates (Remuneration) Order*. I have considered the ruling of the taxing officer of 12th May 2022 and I agree with the Respondent, that the same contains reasons for the decision. Court orders are not made in vain. As the Applicants have not issued Notice of Objection envisaged under Paragraph 11 (1) of the *Advocates (Remuneration) Order* nor sought for extension of time for giving such Notice it will not serve the interests of justice to allow extension of time for filing a reference, when in fact no notice was issued as that would amount to putting the cart before the horse.
17. The upshot is that the Application dated 25th May 2022 lacks merit and the same is dismissed with costs to the Respondents.
18. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 27TH DAY OF JULY 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Bundotich for the 1st, 2nd and 3rd Defendants/Applicants

No appearance for the Plaintiffs/Respondents

Josephine Misigo – Court Assistant

