



REPUBLIC OF KENYA



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Tesot & 2 others (Officials of Umoja wa Wanawake Kipkeikei Women Group) v Ruto & 2 others (Environment and Land Miscellaneous Application 6 of 2022) [2022] KEELC 3277 (KLR) (27 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3277 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 6 OF 2022
FO NYAGAKA, J
JULY 27, 2022

BETWEEN

EMILY TESOT 1ST APPLICANT
RUTH MAIYO 2ND APPLICANT
DORICAS KESSIO 3RD APPLICANT
OFFICIALS OF UMOJA WA WANAWAKE KIPKEIKEI WOMEN GROUP

AND

DAVID KIPTARUS RUTO 1ST RESPONDENT
JOHN BETT 2ND RESPONDENT
HARUN KOLLUM 3RD RESPONDENT

RULING

1. The Applicants' Chamber Summons dated 05/04/2022 and filed on 08/04/2022 seeks the following:
 1. ...spent.
 2. That the Honorable Court be pleased to enlarge time to the Applicants herein within which to file the reference herein out of time.
 3. That the Honorable Court be pleased to stay execution of the Ruling delivered on 08/03/2022 by Hon. C.M. Kesse (DR) pending the hearing of this Application inter partes and pending the hearing and determination of the reference filed herein.



4. That the Honorable Court be pleased to interrogate the Respondent's Bill of Costs more particularly the contested items and order as taxed or in the alternative direct the Taxing Officer to reconsider the contested items.
5. That costs be provided for.
2. The Application is supported by the grounds on its face and by Affidavit of Harun Kipngetich Kollum, the 3rd Applicant. From the facts of the Application, the Taxing Master assessed the Respondents' Bill of Costs on 08/03/2022. The Applicants annexed the Bill of Costs and their submissions marked them as HK 1 and HK 2 respectively. The Applicants are aggrieved by the decision of the Taxing Master citing that she was in error in determining the taxation as an Advocate-Client Bill of Costs yet it was a party and party Bill of Costs. They annexed the said Ruling marked HK 6. The impugned decision was further faulted as being excessive. The Applicants were aggrieved that the Taxing Master ignored the items they contested in the Bill.
3. Following dissatisfaction, the Applicants requested for reasons of the ruling vide their letter dated 17/03/2022 and subsequently on 31/03/2022. The letters were annexed and marked as HK 3 and HK 4 respectively. The Applicants were apprehensive that the Respondents would execute as the execution process was already set in motion. The Application for execution and notice to show cause were annexed and marked as HK 5 (a) & (b) respectively. Whilst they urged this court to allow the Reference, they prayed for enlargement of time to file the reference as they were out of time. They attributed the delay to the Taxing Master who was yet to furnish her reasons for her assessment of costs. They urged this court to allow the Application.
4. The Application was opposed. The Respondents filed their grounds of opposition dated 26/04/2022 on 04/05/2022. They accused the Applicants of undue lethargy in seeking reasons for the taxation. They cited that the Application was muddled as the Reference was filed before the Applicants sought leave. They furthered their contention that the assessment of costs was taxed judiciously. They urged this court to dismiss the Application for want of competence and lacked merit.

Submissions

5. The Application was canvassed by way of written submissions. The Applicants' submissions filed on 13/04/2022 pointed out that this court is vested with wide discretion to enlarge time within which a party can file a Reference. They cited Paragraph 11 (4) of the *Advocates Remuneration Order* and Order 50, Rule 6 of the *Civil Procedure Rules* in support of their contention. They attributed the delay to the failure by the Taxing Master to furnish reasons. On whether stay of execution should issue, they cited Order 42, Rule 6 of the *Civil Procedure Rules* stating that they would suffer substantial loss and be condemned unheard if execution is allowed to continue.
6. The Respondent's submissions filed on 04/05/2022 expressed dissatisfaction with the Applicants' actions. They cited that the Applicants were only moved to request for reasons on 17/03/2022 and then on 31/03/2022 when the bill was taxed on 08/03/2022. They pitted against the Applicants and proceeded with demystifying the Reference under the assumption that they had been granted leave to file the Reference out of time. They urged this court to strike out the Application for being omnibus. On stay, the Respondents submitted that a similar Application was filed in the court of Appeal and dismissed. They were thus undeserving of the orders. They maintained that the Application was brought in bad faith.



Analysis and Disposition

7. I have carefully considered the Application, Affidavits and rival submissions. I have also taken the liberty to consider the applicable law. This court postulates the following issues for determination that will be analyzed sequentially:

a. Whether enlargement of time should be granted?

8. Paragraph 11 of the Advocates Remuneration Order sets out the procedure that a party who is aggrieved of the Taxing Master's decision ought to follow in challenging it. A party is firstly required to give notice in writing within fourteen (14) days from the date of the decision, to the Taxing Master of the items it intends to object to. The Taxing Master, upon receipt shall write or ought to give in writing to the aggrieved party the reasons for the decision of the items objected to. It is after receipt of those reasons that the aggrieved party is given fourteen (14) days to move the court by summons in chambers impugning the decision of the Taxing Master. So that a party can only challenge the decision of the Taxing Master after receipt of the reasons. I fortify my submissions with the case of *Magdalena Alphonse Cheposowor v Cheposupko Lonyareng & 5 Others* [2021] eKLR.
9. In the present case, the impugned taxation took place on 08/03/2022. The Applicant wrote two letters dated 17/03/2022 and 31/03/2022 in compliance with Paragraph 11 of the Advocates Remuneration Order. It was submitted that the reasons by the Taxing Master have never been furnished. As a result, time is yet to start running. It is based on the above foregoing that I find that the prayer to enlarge time to file reference is premature and cannot consequently be granted in that light.

b. Whether stay of execution should be issued?

10. The dogma governing stay of a court's decision is well settled and captured in Order 42, Rule 6 of the *Civil Procedure Rules* as captured in the present Application. It is not lost that a court can grant stay of execution where there is an intended Reference. This was the court's holding in *Governors Baloon Safari Limited vs Skyskip Company Limited & Another* (2020) eKLR where the court held that:
- “Having found that the 2nd defendant is entitled to orders for extension of time within which to file reference, it logically follows that the execution for costs that are the subject of the Objection and Reference should be stayed pending the outcome of the Reference.”
11. The Applicant herein has annexed the Application for execution and notice to show cause demonstrating apparent and real threat of execution which has been set in motion. I further take note of the omnibus Application filed by the Applicant. I do discourage parties from making such Applications and instead adopt a step by step approach to meet the ends of justice. Otherwise such an Application will vex the court as it appears the party is simply gambling to obtain whatever orders it can succeed to obtain.
12. Be that as it may, I find that it is indeed in the interest of justice that the stay orders be granted pending the issuance of reasons by the Taxing Master. It is worth noting here and it should be clear to all parties that execution of taxed costs should not and ought never to issue unless and until after the expiry of fourteen (14) days of the delivery of the taxing master's decision if the adverse party does not request for reason why the taxing master made the decision, or at the expiry of fourteen (14) days after the Taxing Master gives to the requesting party reasons for the decision if the reasons have been requested for in writing in time. Short of that would mean and does mean that the execution that commences is premature and illegal. This I hold because the law is silent on a party making the application for written reasons asking the Court to stay the execution before the reasons are given. What it means is



that the stay is automatic consequent upon the two events that I have described herein regarding the 14 days' period happening. Otherwise, it would defeat the purpose of a party seeking instructions as to the decision of the Taxing Master and thereby seeking reasons for use to file a Reference, a Reference being equated to an appeal against the decision of the Taxing Master. A party should be given a chance to ventilate their appeal by way of Reference.

13. In the circumstances herein, the warrants which were issued following the taxation were premature and should as a matter of right of the Applicant be stayed. If the stay orders are denied, the intended Reference may be rendered nugatory and an academic exercise. But the stay is only subject to the periods I have explained above being observed. Outside of that fresh execution documents should be taken out. Thus, although I have found the Application vexing, perhaps the parties never understood this procedure well hence in the interest of justice I am compelled to grant stay orders conditional to the periods I have explained above.

c.What orders if any should issue?

14. In the foregoing, the Application dated 05/04/2022 partly succeeds in the following terms:
 1. An order is hereby issued directing the Taxing Master to furnish the Applicant with reasons for her Ruling dated 08/03/2022 within 14 days from the date of this ruling or within 14 days of such time as the Taxing Master shall within the station, if away at the time of the delivery of this ruling.
 2. The execution of the Respondent's bill of costs is hereby stayed pending the giving of reasons on the decision of the taxing master and the 14 day's window of the giving of those reasons or such longer period as the taxing master may give upon issuance of her reasons.
 3. Costs shall abide by the intended Reference.

Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 27TH DAY OF JULY, 2022.

DR. *IUR* FRED NYAGAKA

JUDGE, ELC, KITALE.

