



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**(MILIMANI COMMERCIAL COURTS)**  
**CIVIL SUIT NO. 1009 OF 2002**

**BAYER EAST AFRICA LIMITED ..... PLAINTIFF**

**VERSUS**

**EXPRESS KENYA LIMITED ..... DEFENDANT**

**RULING**

The plaintiff's application dated 18<sup>th</sup> April, 2011 seeks the following orders:

- “1. THAT this honourable court be pleased to enlarge time within which the plaintiff may give a written notice to the Deputy Registrar as to its objection to the AND apply for reason for the taxation in respect of the Bill of Costs filed herein by the plaintiff.**
- 2. THAT this Honourable Court be pleased to limit the time within which the plaintiff should file its notice of objection and seek reasons for the taxation in respect of the Bill of Costs filed herein and taxed by Hon. Okato (Deputy Registrar) on 23.3.2009.**
- 3. THAT the costs of this application be provided for.”**

The application was supported by an affidavit sworn by **Steve Luseno**, the plaintiff's advocate. He stated that on 23<sup>rd</sup> February, 2009 the advocates for the parties in this matter appeared before Mr. Okato, Deputy Registrar for taxation of party and party Bill of Costs and which proceeded before the said Deputy Registrar as the Taxing Officer. The Taxing Officer reserved his ruling for 20<sup>th</sup> of March, 2009. However, the ruling was not delivered on the same date and neither was any notice given as to when the same was to be delivered.

After some time the plaintiff's advocate deputized his court clerk to go to the registry and find out the status of the matter. The court file was however not traced. On 30<sup>th</sup> January, 2011 the plaintiff's advocate wrote to the Deputy Registrar requesting for his help in tracing the file to ascertain whether the ruling had been delivered or not. On 7<sup>th</sup> March, 2011 the plaintiff's advocate received a letter from the court informing him that the ruling was delivered on 23<sup>rd</sup> March, 2009. The plaintiff's advocate requested for a copy of the ruling and the same was availed to him on 14<sup>th</sup> April, 2011. Upon perusal of the same and taking instructions from the plaintiff counsel was advised to file an objection. However, the statutory time for filing such an objection had already lapsed.

In response to the said affidavit, the defendant filed a replying affidavit that was sworn by **Njeri Kariuki**, its advocate. The defendant's advocate did not deny that the ruling was delivered in the absence of both parties. She however stated that the plaintiff's application had been made more than two years from the date of delivery of the ruling hence there was inordinate delay in so doing. In her view, no proper explanation had been given for that delay.

Having considered the issues raised by counsel herein, it is common ground that the ruling that was scheduled to be delivered on 20<sup>th</sup> March, 2009 was delivered on 23<sup>rd</sup> March, 2009 in the absence of both parties. It is not clear why no notice was given by the Taxing Officer. It is trite law that where a reserved ruling is not delivered on its appointed date appropriate notice ought to be given to the parties through their advocates before the ruling is delivered. Under **Rule 11(1)** of the **Advocates (Remuneration) Order** where a party objects to the decision of the Taxing Officer, within fourteen (14) days after the decision he should give notice in writing to the Taxing Officer of the items of the taxation which he objects to. **Subrule (2)** requires the Taxing Officer to record and forward to the objector the reasons for his decision on those items and the objector may within fourteen (14) days of the date of the receipt of the reasons file a reference to challenge the decision of the Taxing Officer. Time is therefore of the essence in taking any of the aforesaid steps.

The Bill of Costs had been drawn at **Kshs.2,260,321/=** but various items were disallowed and the sum that was eventually allowed is **Kshs.821,321/=**. The plaintiff could not exercise its right to object to the taxation without making an application to court for extension of time. A party should not be penalized for a mistake made by a court officer. The plaintiff's advocate made considerable effort to search for the court file but in view of the fact that at the material time court records were being scanned many of the files were not in their usual places. I do not therefore think there was any inordinate delay on the part of the plaintiff in making this application.

Consequently, the time for giving a written notice to the Deputy Registrar and for applying for reasons for the taxation is enlarged by a period of fourteen (14) days from the date of this ruling. The plaintiff will be at liberty to file a reference within fourteen (14) days of receipt of the reasons from the Taxing Officer. The costs of this application shall be in the course.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2011.**

**D. MUSINGA**  
**JUDGE**

**In the presence of:**  
**Muriithi – Court Clerk**  
**Mr. Mwangi for Miss Nderitu for the Respondent**  
**Mr. Luseno for the Applicant**