



Richard Satia & Partners & another v Sichangi & 9 others (Environment & Land Case 24 of 2021) [2022] KEELC 2550 (KLR) (20 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2550 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 24 OF 2021**

**FO NYAGAKA, J
JULY 20, 2022**

BETWEEN

**RICHARD SATIA & PARTNERS 1ST PLAINTIFF
JESTIMORE SIMWENYI 2ND PLAINTIFF**

AND

**SAMSON SICHANGI 1ST DEFENDANT
EMMANUEL CHONGE SICHANGI 2ND DEFENDANT
RASMI WASILWA KICHOTI 3RD DEFENDANT
MOHAMMED WEKESA 4TH DEFENDANT
TOM SIRENGO 5TH DEFENDANT
WILLIAM KIRWA 6TH DEFENDANT
RONALD SICHANGI 7TH DEFENDANT
NICK SICHANGI 8TH DEFENDANT
JULIUS TIRIKOI 9TH DEFENDANT
DAVIS BARASA 10TH DEFENDANT**

RULING

1. The Defendants have once again lodged an Application before this court. It is dated June 3, 2021(sic) and was filed on June 6, 2022 seeking the following reliefs:

1. ...spent
2. ...spent



3. ...spent
 4. The 4th Applicant/Defendant be released from civil jail on a personal bond pending the hearing and determination of the Application herein and the intended reference.
 5. That this Honorable Court be pleased to enlarge time within which to file a notice of objection and a reference against the decision of the taxing officer delivered on November 30, 2021.
 6. Costs be paid by the Respondent.
2. The grounds, as well as the Affidavit of the 4th Defendant in support, disclosed that the Defendants were aggrieved by the Taxing Master's Ruling delivered on November 30, 2021. They annexed the Certificate of Costs marked MI 1. The impugned costs was challenged on the ground that they were excessive in the absence of a hearing. They accused their erstwhile Advocates of failing to object to the bill of costs and render proper advice following assessment of costs. They further stated that their Advocates were absent when taxation proceedings took place. They challenged the warrants of arrest against the 4th Defendant, who was sickly, as having not been properly extracted since no notice to show cause was served upon the Defendant. They annexed the Return of Affidavit (MW2), the court relied on to issue the warrants of arrest, challenging that the process server failed to disclose the place and time of service. The Warrant of Arrest (MW3) in force committed the 4th Defendant to civil jail for thirty (30) days. In his deposition, the 4th Defendant also stated that warrants of arrest had been issued to the other Defendants who went into hiding. They further appeared to suggest that a valuation on the suit land was critically omitted.
 3. The Application was further supported by the Affidavit of the 2nd Defendant. He rehashed the contents of his co-Defendants' Affidavit and grounds in support of the Application. In addition, he averred that the Defendants lived separately and nothing would have stopped the process server from disclosing with specificity as to time and place of service. He added that the Defendants were all apprehensive that their health and freedom would depreciate upon arrest. In view of the foregoing, the Defendants urged this court to allow the Application as prayed.
 4. The Plaintiffs opposed the Application by way of Grounds of Opposition dated June 13, 2022 and filed on June 14, 2022. They averred that the Application was res judicata; a replication of their antecedent Application dated February 10, 2022. They added that the court was functus officio as no appeal had been preferred against their previous Application where the court delivered its Ruling on May 4, 2022. This court was being invited to sit as a Taxing Master yet it has not been conferred with such jurisdiction. They faulted the Defendants for failing to comply with Section 94 of the Civil Procedure Act and Paragraph 11 of the Advocates Remuneration Order. They added that the Defendants had failed to seek leave to file a Reference against the decision of the Taxing Master. Finally, they stated that the Application had been overtaken by events as the warrants of arrest had been effected. They urged this court to dismiss the same with costs.

The Submissions

5. During the hearing of the Application, Counsel for the Defendants informed the court that the 3rd Defendant had since been arrested. He prayed for his release. He submitted that the Application was not res judicata.
6. The Plaintiffs relied on their Grounds of Opposition. They maintained that the issues before this court had been determined by the court on May 4, 2022. Be that as it may, the Plaintiffs submitted that the Application had already been overtaken by events.



Analysis and Disposition

7. I have considered the Application, the Supporting Affidavit and the Grounds of Opposition. I have also considered the respective written submissions by rival parties.
8. On whether the 4th Defendant ought to be released from civil jail on a personal bond, I determine that such an issue is best placed before the taxing master who is vested with such jurisdiction. I find that only the taxing master can make a determination on the same. Be that as it may, I find that the prayer has already been overtaken by events. The taxing master on May 23, 2022 committed the 4th Defendant to civil jail for a period of thirty (30) days from the date of the order. A mathematical computation in that regard means that the 4th Defendant is no longer in civil jail as at the time of writing this Ruling. Consequently, that prayer is found to be without merit.
9. The next issue is whether this court ought to enlarge time within which the Defendants can file a notice of objection and a reference against the decision of the taxing master delivered on November 30, 2021.
10. The power to enlarge time is donated to the court under the guise of Order 50, Rule 6 of the [Civil Procedure Rules](#). It stipulates that:

“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.”
11. Paragraph 11 of the Advocates Remuneration Order stipulates the steps a dissatisfied party should take when the decision of the taxing master is impugned. Under sub-paragraph 4, stipulates that: “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 interested 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 expired.”
12. It is from the wordings espoused in Paragraph 11 (4) that the present Application is anchored on. The power to enlarge time is discretionary. A court will thus enlarge time if it is persuaded that the said Application is filed in the interest of justice and that the reasons advanced warrant for the enlargement of time as prayed. As stated by the Court of Appeal in [Samken Limited & 2 Others v Mercedes Sanchez Ran Tussel & Another](#) [1999] eKLR “the discretion can only be exercised upon reason not sympathy.”
13. What are then are the court’s guiding principles when present with an Application of this nature? The Supreme Court in [County Executive of Kisumu v County Government of Kisumu & 8 Others](#) (2017) eKLR pronounced itself as follows:

“It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as:



“The under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

14. In the present motion, the Defendants contended that their erstwhile Advocates were intent on filing the reference but in lieu, challenged the execution process. They furthered that their present Advocates on record have advised them on the need to challenge the bill of costs by way of reference hence the present Application. My understanding of the reasons advanced do not justify the delay of more than six (6) months in bringing the Application before this court. They have not satisfactorily explained the delay in filing the notice of objection and reference and why the court ought to enlarge time in their favor in order to file the reference. The Defendants have not demonstrated that they are deserving of the court’s exercise of its discretionary powers. They have failed to discharge their burden of laying credence to the justification for extension of time.

15. I am further not satisfied as to the reasons for filing the present Application. The Defendants stated that they had every intention of filing the present Application but chose to take an alternate approach. This Application was only galvanized by my sentiments in my Ruling of May 4, 2022 reproaching the Defendants in their failure to move the court pertinently. I say so because the present Application was only filed one (1) month after my Ruling that was delivered. The present Application in my view serves to frustrate the Plaintiffs’ desire and right to enjoy the fruits of their judgment. I am not satisfied that the Application has been filed in good faith. Consequently, the only order that can be sustained from my analysis is a dismissal of the Application dated June 3, 2021(sic) in its entirety with costs to the Plaintiffs.

Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 20TH DAY OF JULY, 2022.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.

