



Amondi & Company Advocates v Varma & others (Environment and Land Miscellaneous Application 28 of 2021) [2022] KEELC 2834 (KLR) (15 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2834 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 28 OF 2021**

**A OMBWAYO, J
JULY 15, 2022**

BETWEEN

AMONDI & COMPANY ADVOCATES RESPONDENT

AND

SANJAY VARMA & OTHERS APPLICANT

RULING

1. The applicants Sanjay Varma & others have come to court under Rule 11 (2) of the *Advocates Remuneration Order* 2014 and sections 1A and 3A of the *Civil Procedure Act* cap 21 Laws of Kenya praying that this Honourable Court be pleased to enlarge the time within which to file a Reference against the decision of the Taxing Master delivered on the 1st day of April, 2021 and that the Court be pleased to issue an order of stay of any and all orders emanating from the ruling of Hon. M. Shimenga delivered and signed on April 1, 2021 pending the hearing and determination of this Reference and/or application.
2. Moreover, that the findings and rulings of Hon. M. Shimenga in Environment and Court in Kisumu MISC Application No. 28 of 2020, taxation, with regards to the Respondent's Bill of Costs, awarding a sum of Kshs. 2,158,755.89 be varied and/or set aside in relation to item Nos. 1 9a), b and c.
3. Furthermore, that this honourable court be pleased to order that the Bill of Cost be re-taxed after considering the Applicant's submissions on the Bill by any other taxing officer.
4. Ultimately, that this honourable court be pleased to interrogate the Respondents Bill of cost in light of the actual work done and adopt the applicant's proposal on taxation of the costs. Lastly, that the costs to this application be borne by the Advocate/Respondent.
5. The application is based on grounds that the copy of ruling was supplied on 20/5/2021. The applicant states that the delay in bringing the reference is due to the fact that the reasons for the ruling by the



- taxing master were not supplied in time. Moreover, that the taxing master erred in taxing the bill excessively at 2,158,755.89.
6. In the replying affidavit, the respondent states that the delay of three months after the ruling was inordinate and an afterthought and that the application was brought with undue delay. The respondent claims that he was not served with the objection notice. According to the respondent, the taxing master did not err. In granting 2, 158,755.89.
 7. The respondent worked tirelessly on the representation of the client in ensuring that the client got orders sought in a matter that took years to be finalized and has a right to receive payment for work done.
 8. According to the respondent, the applicant has not furnished this honourable court with any satisfactory reason as to why the reference was not filed on time; the notice of objection was filed later than the prescribed time of 14 days. Further, the applicant/client has not provided grounds for filing of the reference for consideration.
 9. The respondent contends that the applicant/client has not demonstrated the irreparable loss that they will suffer should the orders not be granted. That the respondent will suffer prejudice should the orders sought be granted. The respondent prays that the same be struck out as against statute. That the applicant is hell bent on delaying the payment of fees. That the applicant has not met the threshold to warrant grant of this honourable court's discretion on granting leave.
 10. In response to the replying affidavit, the applicant states that he filed a notice of objection dated April 20, 2021 addressed to the Deputy Registrar objecting the taxation of the item 1 (a), (b) and (c) impugned Bill of Cost and requested for reasons thereof as provided under the [Advocates \(Remuneration\) Order](#) which was served to the respondent whom in returned stamped on the front page of the said notice of objection.
 11. That in furtherance to the above, their advocates also requested to be furnished with certified copies of ruling to enable them file reference in relation to the above mentioned bill.
 12. The client/applicant's Advocates continued to make several reminders through the court registry to the Deputy Registrar to be supplied with reasons together with a copy of her Ruling so as to consider the same in order to ascertain whether they needed to file a reference on behalf of the client/applicant which we have not received the reasons up to date.
 13. That in furtherance to the foregoing, following the delivery of the Ruling by the Taxing Master the client/applicant through his Advocates on record made several attempts to the Environment and Court to be supplied with a copy of the Ruling and the said attempts proved futile thus delaying the filing of the reference within the timelines prescribed by the law.
 14. That a certified copy of the ruling was issued to his Advocates representative on the 20th day of May, 2021. That upon perusal of the Ruling his Advocates on record advised him to file a reference.
 15. That the delay in filing this reference has not been on the part of the client/applicant, rather the delay is not inordinate and the has been explained and further the granting of the same shall not occasion any prejudice upon the Advocate/respondent.
 16. This honorable court enjoys wide discretionary powers under the [Civil Procedure Act](#) and Rules more specifically as stipulated in section 1 (A), 1(B),3(A), section 79 (G) on overriding objective, the inherent jurisdiction and on account of sufficient cause to exercise jurisdiction in matters of this nature for the interest of justice. It is noted that paragraph 11 (1) (2) of the [Advocates Remuneration Order](#) do not



speaking to the relevant factors that the Court should consider when exercising its discretion on whether or not an extension of time should be granted.

17. Guidance must therefore be discerned from case law in *Paul Wanjobi Mathenge v Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal while referring to other authorities observed;-

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi v Charles Gichina Mwangi* – Civil Application No Nai 26 of 2004, this court held; -

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd* [2003] KLR 486 in which this court stated;-Over the years, the Court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* – Civil Application No Nai 255 of 1997(unreported), the court expressed itself thus; -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reasons for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

18. As stated in the above cases the length of the delay and reasons for non-compliance of the time lines are important factors to influence the exercise of discretion of the court. I have considered the application and rival submission and do find that the applicant has not explained the delay of 3 months in filing this application. The application was to be made within 14 days of the ruling. The applicant became aware of the ruling on 19/5/2021 and filed the reference on 9/8/2021. The delay is inexcusable, inordinate and not explained. The application for extension of time is dismissed with costs.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 15TH DAY OF JULY 2022

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th // March 2020.

