

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Miscellaneous Civil Application 204 of 2009

KILONZO & CO. ADVOCATES.....APPLICANT

VERSUS

HON. JOHN MICHAEL NJENGA MUTUTHO.....RESPONDENT

RULING

In his Chamber Summons dated 4th December 2009 brought under **Rule 11(4)** of the **Advocate Remuneration Rules** John Michael Njenga Mututho (the Respondent) seeks the enlargement of time to enable him give notice of his objection to the taxation of the bill of costs in Nakuru High Court Election Petition No. 2 of 2008. The application is supported by his counsel's affidavit in which he has deposed that though the taxation was heard inter-partes, the ruling thereon was reserved to 5th October 2009. It was, however, not delivered on that day but on 16th November 2009 without notice to his firm. He got to know of it from the Respondent on 1st December 2009 after the period allowed for giving the notice had expired. He perused the court file the following day and discovered that the ruling had been delivered on 16th November 2009.

The application is strongly opposed by the Applicant. In his replying affidavit Mutula Kilonzo Junior of the Applicant's firm dismissed it as one of the Respondent's tactics to procrastinate the disposal of this matter. He further deposed that notice of the delivery of the ruling was posted on the notice board.

Rule 11(1) of the Advocates Remuneration Rules states that:-

“Should any party object to the decision of the taxing officer, he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.”

Subrule (4) of that Rule gives the High Court “power in its discretion by order to enlarge the time fixed by paragraph (1)” hereinabove. There is no dispute that the ruling on taxation was not made on the 5th October 2009 as scheduled. On that day it was not ready and it would appear the court said it would deliver it on notice and that that notice was given by posting it on the notice board. I agree with counsel for the Respondent that that was not proper notice.

When the ruling was delivered on 16th November 2009 the Applicants wrote directly to the Respondent instead of writing to his advocates. By the time the Respondent communicated with his advocates the 14 days period for giving notice of objection had expired hence this application. Taking all these into account, I do not think that the Respondent can be blamed for the delay. Consequently I allow this application and enlarge the time for giving the notice of objection by a period of **7 days** from the date hereof and thereafter proceed as stated in **Rule 11(2)** of the **Advocates Remuneration Rules**. Since it is the court which failed to give proper notice of the delivery of the ruling I order that each party bears its own costs of this application.

SIGNED, DATED and DELIVERED this 31st day of March, 2010.

D. K. MARAGA
JUDGE.