



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Miscellaneous Application 410 of 2008**

**A.M. KIMANI & CO. ADVOCATES .....APPLICANT/ADVOCATE**

**VERSUS**

**KENINDIA ASSURANCE CO. LIMITED.....RESPONDENT/CLIENT**

**RULING**

1. Before me is an application by way of Chamber Summons dated 26<sup>th</sup> February, 2009 brought by the Respondent/client (herein referred to as client under) the provisions of Section 11(1), 11 (2) and 11 (4) of the Advocate Remuneration Order, Section 5 of the Advocates Act, Cap. 16 of the Laws of Kenya and Section 3A of the Court Procedure Act
2. The application is seeking for stay of execution and enlargement of time within which the applicant may give notice in writing to the taxing officer of the items it objects to.
3. The applicant/Advocate (hereinafter referred to as the advocate) has vehemently objected to the application. The advocate in the replying affidavit of *A.M. Kimani* Advocate has raised various issues.
4. Before me for determination is whether justifiable reasons have been given for the delay and whether or not I should exercise my discretion to enlarge time.
5. The taxing officer's ruling on the subject matter herein was delivered on the 12<sup>th</sup> of February, 2009. The law requires that any party objecting to the ruling ought to give notice of objection to the taxing officer within 14 days of the same.

Paragraph 11 (1) provides

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

6. The client herein did not file the objection within the stipulated time. The objection was filed on the 2<sup>nd</sup> March, 2009 to 2 days late. The reasons given are that the applicant needed to consult within its establishment which took a bit of time. That the stipulated period lapsed by the time they instructed their current advocate, whose attempt to beat the deadline was unsuccessful.

7. I find some of the issues raised by the advocate in objecting application not relevant to the application before me. Of relevance to this application is that any stay or enlargement of time will be prejudicial and that no good reason has been advanced to warrant the court to exercise its discretion in favour of the client. Further that the client did not comply with an earlier order requiring a security bond to be filed hence the client is not entitled to the orders being prayed for.

8. Under paragraph 11(4) the court has the power to enlarging time under paragraph 11 (1).

9. Paragraph 11 (4) provides:

**“The High Court shall have power in its discretion by order to enlarge the time fixed by Sub Paragraph (1) or Sub Paragraph (2) for the taking of any steps, 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 already been expired”.**

10. In exercising its discretion the court must consider whether the delay was inordinate and reasons for the said delay. The discretion has to be judiciously exercised in order to meet the ends of justice. I have looked at the earlier orders made by Visram J (as he then was) regarding the insurance bond. The said order did not specify who was to issue the bond and I therefore find that the irrevocable insurance Bond filed in court on 11<sup>th</sup> of March, 2009 was filed in compliance of the said order.

11. I further find that the delay of two days is not inordinate and the reasons given are justifiable, I therefore accordingly make the following orders:

1. That the time for serving notice in writing to

the taxing officer under sub paragraph 11(1) be and of the objection be and is hereby enlarged and the objection filed on the 2<sup>nd</sup> of March, 2009 be deemed as having been filed within time.

2. That the Registrar do forthwith record and forward to the objector the reasons for his decision on the items being objection upon.

3. That the Respondent/client herein do file within the its reference to the High Court within 14 days of receipt of the taxing officers reason.

4. That there be stay of execution or pending of the hearing reference.

5. Costs of the application be paid to the advocate.

**DATED and DELIVERED** at Nairobi this 23<sup>rd</sup> day of July, 2009.

**ALI- ARONI**

**JUDGE**