

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Appli 259 of 2003

SHAH & PAREKHAPPLICANT

V E R S U S

APOLLO INSURANCE CO. LTDRESPONDENT

R U L I N G

The advocate/client bill of costs herein dated 10th March, 2003 was taxed on 26th June, 2003 at KShs. 52,967/00 (all inclusive). By chamber summons dated 17th May, 2007 filed on 24th May, 2007 the Client, **Apollo Insurance Co. Ltd.**, challenged the taxation. This was after a consent order was recorded by a Senior Deputy Registrar on 8th May, 2007 in the following terms:-

“By consent, the reasons for the taxation be deemed to be contained in the ruling, and the respondent to file and serve his reference within 14 days.”

The chamber summons dated 17th May, 2007 should thus have been filed on or before 22nd May, 2007. It was filed on 24th May, 2007, two days out of time. The Client has therefore sought by chamber summons dated 1st February, 2008 orders that time to file the reference be appropriately enlarged and the chamber summons dated 17th May, 2007 be deemed to have been duly filed. The application is opposed by the Advocate, **Shah & Parekh**.

I have read the grounds of opposition dated 21st February, 2008 and all affidavits filed in support of and in opposition to the application. I have also given due consideration to the submissions of the learned counsels appearing. No cases were cited.

Mr. Parekh, learned counsel for the Advocate submitted that when the reference came up for hearing on 16th October, 2007 it was pointed out to the Client’s learned counsel that the reference was filed out of time, and further, that the order of adjournment then made required the Client to file the present application within 10 days. But the record of the court does not fully bear this out. Whereas the Client’s counsel is recorded as having stated that he had noticed that the reference was filed out of time, the adjournment order does not include an order that an application to regularize the filing of the reference be filed within 10 days of 16th October, 2007. There was no mention of filing of such application. But that fact does not assist the Client. It was under a duty to file the present application without delay after 16th October, 2007. The application was not filed until 7th February 2008, a delay of about three months and three weeks. This delay is inordinate and must be satisfactorily explained if the Client is to enjoy the discretion of the court. Has the delay been so explained?

The supporting affidavit is sworn by the Client’s learned counsel, MR. DAVID MUKII MEREKA. That affidavit, sworn on 1st February 2008, contains no explanation at all for the delay between 16th October, 2007 and 7th February, 2008. In a further supporting affidavit sworn and filed on 4th March, 2008 the Client’s learned counsel has sought to explain the delay. He says at paragraph 15 that in November and December, 2007 he was out of the country and therefore not available to swear the supporting affidavit. At paragraph 16 he says that in January, 2008 the political crisis precipitated by the disputed General Elections forced his office to open late, **“almost towards the end of January, 2008”**.

There is no explanation why the application was not filed in the 15 days between 16th and 31st, October, 2007. There is also no explanation why in the absence of Mr. Mereka any other advocate in his firm could not swear the supporting affidavit. The letter-heads in correspondences exhibited in the further supporting affidavit indicate that there were at least three other advocates in the firm of Mr. Mereka. More importantly, there is no explanation why the supporting affidavit could not be sworn by an officer of the Client.

I am not satisfied that the delay of about three months and three weeks between 16th October, 2007 and 7th February, 2008 has been satisfactorily explained. This was inordinate delay given the circumstances of this case. The matter is old. The taxation sought to be challenged was done on 26th June, 2003. The taxed sum is fairly modest. There is evidence exhibited in the replying affidavit that the Client did not deal with this matter with the dispatch it required, despite prompting by the opposite side. Although the long delay prior to 8th May, 2007 was excused by the consent order entered on that date, surely any further delay was not to be countenanced without a satisfactory explanation!

Having considered all matters placed before the court I find no merit in the chamber summons dated 1st February, 2008, and I must refuse it. It is hereby dismissed with costs. The logical consequence of this is that the reference by chamber summons dated 17th May, 2007, which was filed out of time, is not properly before the court and must be struck out. It is hereby struck out with costs. Those shall be the orders of the court.

DATED AT NAIROBI THIS 12TH DAY OF NOVEMBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 14TH DAY OF NOVEMBER, 2008