



Billy Amendi & Co Advocates v Kadu & others (Environment and Land Miscellaneous Application 151 of 2018) [2022] KEELC 15132 (KLR) (24 November 2022) (Ruling)

Neutral citation: [2022] KEELC 15132 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 151 OF 2018
OA ANGOTE, J
NOVEMBER 24, 2022

BETWEEN

BILLY AMENDI & CO ADVOCATES APPLICANT

AND

CAROLINE M. CHELEDI KADU & OTHERS RESPONDENT

RULING

1. The respondents/ applicants filed an application dated May 17, 2022, through which it sought the following orders:-
 - a. Spent
 - b. Leave be and is hereby granted to the Applicants to file the reference out of time against the impugned ruling.
 - c. Spent.
 - d. The Ruling of the Taxing Master, Honourable Deputy Registrar Diana Orago delivered on 24th March in respect to the Advocate- Client Bill of Costs dated September 13, 2018 be set aside and/ or vacated.
 - e. The Honourable Court be pleased to direct the Respondent's Bill of Costs dated September 13, 2018 be taxed afresh before a different taxing master.
 - f. Costs of this application be in the cause.
2. The application is based on the grounds on the face of it and the Supporting Affidavit sworn by the 1st Respondent/Applicant, who deponed that the Applicant represented the clients in a sale transaction of property known as House No A148 Onyonka Estate title No, Nairobi/Block72/418 and that the



Applicant later lodged an Advocate/Client Bill of costs against the clients dated September 13, 2018 and a ruling was delivered on March 24, 2022 on the said Bill of Costs.

3. The 1st Respondent/Applicant deponed that the Taxing Master only read her findings without reading the substance of her Ruling; that she immediately sought for copy of the ruling on March 25, 2022; that an uncertified copy was availed to them; that they thereafter moved the Deputy Registrar under section 11(1) of the *Advocates (Remuneration) Order* seeking for reasons informing the taxation and that a certified copy was thereafter delivered to her on April 19, 2022.
4. The 1st Respondent/Applicant averred that the Hon Deputy Registrar's Ruling did not address itself to the counter-arguments and/or submissions in opposition to the Bill of Costs raised by the Respondents nor did it address the fact that the Advocate exercised a lien over the client's money and was thus undeserving of the amount awarded.
5. The 1st Respondent deponed that he received a letter on May 4, 2022 dated April 26, 2022 from the Deputy Registrar in response to the request for reasons and that they are dissatisfied with the Ruling and reasons given by the Taxing master.
6. In her affidavit, the Applicant/Respondent deponed that after the Applicant represented the Respondents in the sale of a house, a dispute arose between the parties regarding settlement of the Applicant's legal fees for the transaction upon conclusion of the sale; that as a result of the dispute, the Applicant withheld part of the proceeds of the sale of the property which the Respondent were wholly entitle to amounting to Kshs 4,500,000 and that the Applicant thereafter lodged an Advocate-Client Bill of Costs dated September 13, 2018 and a Ruling in respect of the Bill of Costs was delivered on March 24, 2022.

Analysis and Determination

7. This Reference application has been filed pursuant to rule 11 of the *Advocates (Remuneration) Order* as well as sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*.
8. The issues for determination before this court are:-
 - a. Whether the court should allow the reference to be filed out of time
 - b. Whether the Ruling dated March 24, 2022 should be set aside and the Bill of Costs taxed a fresh.
9. Rule 11 of the *Advocates Remuneration Order* provides as follows:
 - “(1) 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.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.”
10. The material time for filing an application to this court as set out in rule 11(2) is within 14 days of receipt from the Taxing officer of the reasons for his or her decision. It is trite that the remedy of extension of time is an equitable relief. It is thus upon this court to exercise its discretion fairly and without caprice. This was the position that was taken in *Salat v Independent Electoral & Boundaries*



Commission & 7 others [2014] eKLR where the court set out the under-lying principles that a court should consider while exercising the discretion to extend time as follows:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party.
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.
- iii. Whether the Court ought to exercise discretion to extend time, is a consideration to be made on a case to case basis.
- iv. Whether there is a reasonable reason for the delay, which ought to be explained to the satisfaction of the Court.
- v. Whether there would be any prejudice suffered, the respondent if the extension was granted.
- vi. Whether, the application had been brought without undue delay and,
- vii. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”

11. In this matter, the 1st Respondent has claimed that following the delivery of the Ruling on March 24, 2022, she procedurally sought a copy of the Ruling on March 25, 2022 but only received an uncertified copy. Dissatisfied with the contents of the Ruling, the Respondents moved the Deputy Registrar under section 11(1) of the Advocates (Remuneration) Order seeking reasons informing taxation.
12. According to the Respondents, a certified copy of the Ruling was not availed to them until May 4, 2022 when they received a response from the Deputy Registrar dated April 26, 2022 in which she indicated that the reasons for her decision were contained in the Ruling. This reference was thereafter filed on May 17, 2022.
13. Considering that the Ruling was delivered on March 25, 2022, the reference ought to have been filed by April 8, 2022. Having been filed on May 17, 2022, there was a delay of more than a month. It is contended that this delay was brought about by the lack of clear communication by the Deputy Registrar.
14. This court notes that the notice of objection to the Ruling was sent to the Taxing Officer on March 31, 2022. It was much later that the Taxing Officer informed the Respondent/Applicant that the reasons were in the Ruling. There is no evidence to show the prejudice that the parties have suffered by the delay in filing this reference. Indeed, the delay of one month is not inordinately long. This court therefore allows the reference to be filed out of time.
15. The Respondents have pled that the Taxing Master failed to consider their submissions against the Bill of Costs; that the Applicant exercised a lien over Kshs 4,500,000 lawfully payable to the Respondents and was thus undeserving of the amounts awarded and that the value of the subject matter was Kshs 13,500,000 and not Kshs 15,000,000.
16. This court first notes that the Taxing Master indicated in her Ruling that the Bill of Costs is taxed pursuant to both Schedule 1 and 5 of the 2014 Advocates (Remuneration) Order. Although the Applicant indicated in its Bill of Costs that the value of the subject matter was Kshs 15,000,000, the Sale Agreement dated September 1, 2016 which he presented to the Taxing Master, and on the basis



upon which the Taxing Master relied on indicates that the purchase price was Kshs 13,500,000. This thus represents an error in principle.

17. The Respondent has also asserted that the Taxing Master failed to consider that the Applicant unjustly exercised lien over part of the purchase price. This court has held in *Booth Extrusions (Formely) Booth Manufacturing Africa Ltd v Dumbeya Nelson Muturi Harun t/a Nelson Harun & Co Advocates* [2014] eKLR that an advocate holding client's money could exercise a lien over the same until such time that his fees has been paid in full, and the right to exercise lien must not be exercised arbitrarily, without notifying the client of the fees due to the Advocate.
18. It is evident that this issue was raised in the Respondent's submissions but was not considered in the Taxing Master's Ruling. This would have been an essential consideration with respect to the dispositive orders, because had the Taxing Master found that such sum has indeed been retained by the Applicant, it would have ordered that the Advocates fees be set off against it. The failure to consider this issue in the ruling is an error in principle.
19. On the basis of this findings, this court is persuaded that the respondent's application is merited and is allowed. The Taxing Master's decision dated March 25, 2022 is hereby set aside.
20. For those reasons, the court makes the following orders:
 - a. The advocate- client bill of costs dated September 13, 2018 be and is hereby remitted for taxation before any taxing master other than the taxing master who taxed the aforesaid advocate-client bill of costs.
 - b. The costs of the application will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 24TH DAY OF NOVEMBER, 2022.

OA ANGOTE

JUDGE

In the presence of;

Mr Were for Osundwa for applicant.

No appearance for respondent.

Court Assistant - June.

