

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

MISCELLANEOUS CIVIL APPLICTION 40 OF 2007

BARCLAYS BANK OF KENYA LTD:.....APPLICANT

-VERSUS-

PETER GICHUKI T/A PETER BIRDS INVESTMENTS AUCTIONEERS:.....RESPONDENT

RULING

A Bill between the applicant and Respondent was taxed by the taxing master on 26th January 2007 at the sum of sh.29,000/= . On 26th February 2007 the applicant filed a chamber summons seeking court to set aside the said taxing for being invalid. On the same day he filed this application seeking court to extend time within which to file a reference to this court by way of chamber summons and for the court to deem the chamber summons filed in the same day to be duly filed.

Collins Namachanja an advocate who was acting for the applicant swore an affidavit in support of the application. He stated that his firm had instructions from the applicant to file a reference to the High Court if the taxation was not in their favour. He deponed that he misconstrued the time in which to file the reference and hence the delay.

Mr. Shivaji prosecuted the application for the applicant. He retaliated the averments in Mr. Namachanjas affidavit. He said that Mr. Namachanja thought that the reference should have been done in 30 days and not in 7 days.

Application was opposed. I have considered the application, submissions by both counsel and the affidavit. Any reference to High on taxation on auctioneers matters should be done within 7 days. This was not done. The reference was done one month later. The explanation given by Mr. Namachanja are not plausible. He clearly stated that he had instructions from his client to file the reference thus by the day of taxation. I do not believe that Mr. Namachanja who is a Senior advocate could have misconstrued the time in which to file the reference. He must have been indolent and this court therefore do not see why it should condone that. The explanation for the delay is therefore not satisfactory and the same is rejected.

The court also notes that the applicant knowing very well that he was late in filing his reference went ahead and filed it without the leave of the court then in the same breath made an application to have the reference filed out of court deemed to have been filed in time. the reference was filed on 26th February 2007. This application was filed the same day. Infact a perusal of the file reveals that the two application were paid for under the same receipt. that is being cheeky. the applicant knowing that he had not made his reference out of time should first have made an application to have the time extended and if his application was allowed then he would file the application. Instead of that he filed the reference knowing very well that it was out of time and then sought to have it validated. The court of course has discretion to do so but this situation is different from one where a litigant files pleadings without noticing that he is out of time and later checks for extension of time and to have the pleadings already filed to be deemed to have been filed within time.

From the above therefore I reject the application to extend time in which to file reference from the taxing masters order. Consequently, though there is no formal application, the court on its own motion dismisses that application and the reference was filed on the same date with costs.

Dated and Delivered at Eldoret this 16th March, 2006.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-

C/C - David

N/A of Applicant

Mr. Kariuki for Respondent.