



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Misc Civ Appli 237 of 1998

REPUBLIC.....APPLICANT

VERSUS

LAIKIPIA DISTRICT LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

PRINCIPAL MAGISTRATE NYAHURURU.....2ND RESPONDENT

AND

GIBSON MAINA KIBUGI.....1ST INTERESTED PARTY

STANLEY GITAHI KIRERU.....2ND INTERESTED PARTY

RULING

The 1st Interested Party, Gibson Maina Kibugi (*hereinafter referred to as the applicant*) has made an application under **Rule 11(2) and (4)** of the **Advocates Remuneration Order** seeking the orders of this court to extend time within which the said applicant is to apply for grounds and or reasons from the Deputy Registrar of this court following the ‘*taxation*’ of the respondent’s bill of costs on 13th of June 2005. He further prayed for an order of this court for the applicant to be given time upon which to file reference after the said Deputy Registrar of this court has supplied him with grounds or reasons. The grounds in support of the application are that the applicant contends that his former advocates had not informed him when the 2nd Interested Party’s bills of costs (*hereinafter referred to as the respondent*) were taxed. He further complained that the bill of costs presented by the respondent were not actually taxed by the Deputy Registrar of the court as the only words that appear on record are ‘*as drawn*’. He stated that the mistakes of his former counsel who failed to diligently pursue the matter and advise him accordingly should not be visited upon him. His application is supported by an affidavit which he swore on the 25th of April 2006. The application is opposed. The respondent filed a replying affidavit in opposition to the application.

At the hearing of the application, Mr. Karanja, learned counsel for the applicant reiterated the contents of the application and the supporting affidavit. He submitted that the Deputy Registrar of this court had not taxed the bill of costs that were presented before him and therefore the said taxation was unlawful. He submitted that the applicant was not represented when the bills of costs of the respondent were taxed. The applicant only became aware of the said taxation when he was served with the notice to show cause. He submitted that the respondents had irregularly taxed two separate bills of costs instead of one. In view

of the irregularities mentioned, the applicant urged this court to extend time by which the applicant is to comply with the provisions of the law as to the time of filing a reference to challenge the said taxation. He submitted that the respondent would not be prejudiced if the application is granted.

Mr Nderitu learned counsel for the respondent opposed the application. He reiterated the contents of the replying affidavit filed by the respondent. He submitted that the application by the applicant had been filed one year after the taxation. In his view, the applicant had been indolent in filing the application as he was aware of the decision of the Deputy Registrar after the said taxation. He submitted that the applicant was served with a notice to show cause on the 5th of October 2005 and only came to court after nine months. He argued that the applicant was conveniently blaming his former advocates on record yet the said former advocates were aware of the date when the ruling was delivered because he was notified by the Deputy Registrar of the court. He submitted that the applicant had advanced no reasonable explanation for the delay that would make this court exercise its discretion in his favour by extending time. He referred this court to several decided cases all of which pointed to the fact that the court should not exercise its discretion to aid a litigant who has been guilty of laches and inordinate delay. In his view, the applicant had filed this application in utter abuse of the due process of the court.

I have read the pleadings filed by the parties in this application. I have also carefully considered the submissions made by the parties to this application. I have also read the decided cases that were relied on by the applicant and the respondent. The issue for determination by this court is whether the applicant has established a case to enable this court grant him extension of time sought in his application. **Rule 11(4) of the Advocates (Remuneration) Order** provides that:

“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 step; 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 expired.”

The above rule gives this court unfettered discretion to extend time upon which any act may be done in accordance with the provision of **Rule 11 Advocates (Remuneration) Order**. This discretion however has to be exercised judicially. This court must be satisfied that the reasons advanced by the applicant are sufficient reasons that would make any court of law extend time. In the instant application, the applicant has basically raised three grounds for his failure to apply for reasons from the Deputy Registrar within the requisite period. He blames his former advocates for not attending court when the respondent’s bills of costs were taxed. He further blames his former advocates for not informing him that the said bills of costs had been taxed. The third reason is that the applicant contends that the Deputy Registrar failed in his duty when he was called upon to tax the respondent’s bills of costs. In his view, the respondent’s bills of costs were not actually taxed as provided by the law.

Are these reasons sufficient enough to make this court exercise its discretion in favour of the applicant and grant the extension of time sought? I do not think so. This court and various courts of record have stated that a suit, once filed, is owned by a litigant and not his counsel. It behoves a litigant to diligently pursue his case and ensure that it has been prosecuted to its conclusion. A litigant cannot blame his counsel for failing to inform him of the progress of his case. It is such a litigant’s duty to keep in contact his advocate so that he is aware of the progress that would have been made in his suit. When a litigant blames his advocates for failing to inform him of a decision made in his case, especially putting into consideration that more than nine months had expired since the said decision was rendered, in my view, that is an excuse that is raised by such a litigant to mislead this court into granting him the orders sought. Furthermore, it is trite law that when an advocate diligently fails to give effect to the instructions of his client he may be liable to be sued for professional negligence. It cannot in all circumstances be a ground for setting aside an adverse order made against such a litigant.

I have perused the entire proceedings in this file. It is clear that since the bills of costs were filed by the respondent, the applicant has shown no interest in participating in the taxation of the said bills of costs. It is only when the applicant was threatened with execution that he woke up from his deep slumber

and was moved to make this application. In my view, the application has not been made in good faith. I will not exercise my discretion in favour of such an indolent litigant. The other complaint by the applicant is that the Deputy Registrar had not taxed the respondent's bills of costs. That complaint is neither here nor there. The order of taxation is on record. No appeal has been filed to challenge it. It is therefore a valid order of this court unless it is set aside or reviewed.

The upshot of the above reasons is that I find no merit with the application filed by the applicant herein. The said application is hereby dismissed with costs to the respondent.

DATED at NAKURU this 20th day of July 2006.

L. KIMARU

JUDGE