



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC NO. 517 OF 2017

(Formerly NAIROBI ELC No. 1143 OF 2015)

LENGARE OLE NGAPE.....PLAINTIFF

VERSUS

MPAA OLE DAMO.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

What is before Court for determination is the 1st Defendant's Chamber Summons dated the 15th March, 2020 brought pursuant to section 51 of the Advocates Act and Rule 11 of the Advocates (Remuneration) Order. The 1st Defendant seeks the following orders:

1. This Honourable Court be pleased to set aside the Ruling of Hon. Edwin Mulochi dated 17th February, 2020 and all consequential orders arising therefrom.
2. There be a stay of execution of the Certificate of Taxation pending the hearing and determination of the Reference.
3. This Honourable Court enlarges the time within which to file a reference against the decision of the taxing officer delivered on 17th February, 2020.
4. That the Reference filed herein be deemed as properly filed though filed out of time.

The application is premised on the grounds on the face of it and the supporting affidavit of Daniel Mukeli an Advocate in conduct of the matter on his behalf where he explains that Hon. Edwin Mulochi (DR) delivered his Ruling on 17th February, 2020 taxing the Bill of Costs at Kshs. 826,362/=. He contends that considering the estimated value of the suit property which is about Kshs. 17,200,000/=, the Taxing Master awarded an excessive sum of Kshs. 522,500/= as instructions fees. He claims the figure of Kshs. 174, 167/= assessed as getting up fees was excessive. He reiterates that the reference to challenge the said Ruling was not filed on time as the 1st Defendant was awaiting to receive a typed copy of the Ruling hence the delay. Further, that the Application has been brought within one month after the Ruling was delivered hence there was no inordinate delay.

The Plaintiff opposed the application by filing a replying affidavit sworn by BOTANY MATHIAS MWAMUYE his Advocate where he deposes that the Applicant has never provided a Valuation Report to confirm estimated value of the suit land and the Respondent also took into consideration the approximate market value at that material time of the other immediate properties. He insists the amount taxed is not excessive and allegations by the Applicant cannot make a court interfere with the Taxing Master's discretion. He contends that the application is frivolous, scandalous and an abuse of the court process. Further, that the Applicant deliberately failed to adhere to the steps set out in the Remuneration Order in filing a Reference. He avers that the Applicant has failed to attach a copy of the objection to the Taxing Master or did not prepare one on the items of taxation he is objecting to. Further, the Applicant has not attached a copy of the letter requesting for the typed Ruling and the said Ruling delivered on 17th February, 2020 was already typed at the time of delivery. He insists the Applicant was not in attendance at the time of delivery of the Ruling and as such showed no interest in objecting to the decision of the Taxing Master at that particular time.

The application was canvassed by way of written submissions.

Analysis and Determination

Upon consideration of the instant Chamber Summons application including the rivalling affidavits and submissions, the following are the

issues for determination:

- Whether the Court should enlarge time to file the Reference herein.
- Whether the Court should Grant a Stay of execution of the Certificate of Taxation.
- Whether the Court should set aside the Ruling of Hon. Edwin Mulochi dated 17th February, 2020

As to whether the Court should enlarge time to file the Reference herein.

The Applicant seeks leave to lodge a Reference against the Ruling of the Taxing Master dated the 17th February, 2020. He claims he failed to file a Reference on time as he was awaiting for a copy of typed Ruling. He relied on the case of **Njeri Onyango & Co. Advocates V Ufundi Cooperative Society Limited (2014) eKLR** to buttress his arguments. The Respondent opposed the Application and submitted that the Applicant has not demonstrated sufficient ground to be allowed to file the Reference out of time. He relied on the decisions of **Amuga & Co. Advocates V Joyce Nzisa & 4 Others (2015) eKLR**; **Muri Mwaniki & Wamiti Advocates V African Banking Corporation Limited (2020) eKLR** and **Karume Investments Limited V Kenya Shell Limited & Another (2015)** to support his arguments. I wish to make reference to the various legal provisions outlining the procedure a party should adhere to; in case they intend to object to the Taxing Master's decision.

Clause 11 of the Advocates Remuneration Order stipulates that: ‘

‘(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.

(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (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.’

In the current scenario, the Applicant has lodged an application seeking enlargement of time to file an objection to the Taxing Master's Ruling. It was the Applicant's contention that he was awaiting for a copy of the Typed Ruling to enable him lodge an objection. These averments have been controverted by the Respondent who insists that the Applicant has not annexed any letter confirming that he sought for a typed ruling. He contended that the Ruling was available typed upon delivery. Upon perusal of the supporting affidavit, I note the Applicant did not furnish court with any proof that he sought for a typed Ruling. Further, he did not controvert the Respondent's averment that the typed Ruling was available upon delivery. I further note that the Applicant has failed to attach a copy of the objection to the Taxing Master's Ruling. Except for claiming the Instructions and Getting up Fees is exorbitant, he has not provided a Valuation Report indicating a different value of the suit land. Based on the facts before me including the legal provisions cited above, I find that the Applicant has not provided plausible reasons seeking the discretion of the Court to enlarge time to allow him file a reference out of time. In the circumstance, I will decline to grant the Applicant leave to lodge the reference out of time.

Since I have declined to enlarge time to lodge the reference, I will not proceed to handle the issue of stay of execution of Certificate of Taxation or set aside the Taxing Master's Ruling as these could only be dealt with once there was a valid reference which is not the case herein.

It is against the foregoing that I find the instant application unmerited and will proceed to dismiss it with costs.

Dated Signed and Delivered virtually at Kajiado this 15th Day of February, 2021.

CHRISTINE OCHIENG

JUDGE