



REPUBLIC OF KENYA



**B.M. Mung'ata & Co. Advocates v Seke (Environment and Land Miscellaneous Application 6 of 2021) [2024] KEELC 1183 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1183 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 6 OF 2021  
CA OCHIENG, J  
MARCH 5, 2024**

**BETWEEN**

**B.M. MUNG'ATA & CO. ADVOCATES ..... ADVOCATE**

**AND**

**SAMUEL KALOVOTO SEKE ..... CLIENT**

**RULING**

1. What is before Court for determination are two Applications dated the 11<sup>th</sup> July, 2023 and 18<sup>th</sup> September, 2023 respectively. In the Notice of Motion Application dated the 11<sup>th</sup> July, 2023, the Advocate seeks the following Orders:-
  1. That Judgment be and is hereby entered for the Applicant and Decree be and is issued for the taxed costs of Kshs 2,298,963.50.
  2. That costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Brian Munyao Advocate where he confirms that the Applicant's Bill of Costs was taxed at Kshs 2,298,963.50 on 23<sup>rd</sup> May, 2023 and a Certificate of Taxation issued to that effect. He states that the Respondent has refused to settle the taxed amount and seeks for Judgment to be entered for the said taxed costs and Decree issued to that effect.
3. The Respondent opposed the Application and filed a Replying Affidavit sworn by Samuel Kalovoto Seke where he deposes that the said Application is misconceived, grossly incompetent, fatally defective and an abuse of court process. He argues that the provisions under which the Application is filed does not donate power to Court to grant the orders sought. He explains that he was aggrieved with the Taxing Officer's decision dated the 23<sup>rd</sup> May, 2023 but owing to his indisposition he could not instruct his Advocate on record to challenge the said decision within the timelines as dictated by law.



He claims that he has now instructed his advocate to file an application seeking for enlargement of time to challenge the cost awarded to the Applicant.

4. The Client/Respondent in his Chamber Summons Application dated the 18<sup>th</sup> September, 2023 seeks for the following Orders:-
  1. Spent
  2. That the Honourable Court be pleased to enlarge time in favour of the Applicant herein to enable him lodge an objection with the decision of the Taxing Officer delivered on 23<sup>rd</sup> May, 2023.
  3. That pending hearing and determination of this application, there be a stay of execution of the cost awarded to the Respondent on 23<sup>rd</sup> May, 2023.
  4. That the cost of this Application be in the cause.
5. The Application is based on the grounds on the face of it and the Supporting Affidavit of Samuel Kalovoto Seke where he deposes that being aggrieved with the decision of the Taxing Officer dated the 23<sup>rd</sup> May, 2023 wherein the Bill of Costs was taxed at Kshs 2,298,963.50, he wishes to challenge the said decision. He contends that the Taxing Officer's award of cost on most of the items was based on speculation, while in some instances the cost awarded was inordinately high and unsupported by documentary evidence. He claims he has been ailing since May, 2023 and only got a copy of the Taxing Officer's decision after expiry of the period allowed for lodging an objection. He seeks for enlargement of time to enable him file an objection to the Taxing Officer's decision in terms of Rule 11(1) of the Advocates Remuneration Order. He further seeks for a stay of execution of the costs awarded to the Advocate.
6. The Advocate opposed the Application by filing a Replying Affidavit sworn by Brian Munyao Advocate where he deposes that the said Application is laden with half-truths and glaring misrepresentations in an attempt to mislead the court. Further, that the Application is frivolous, vexatious and an abuse of the court process. He argues that the Application is a delaying tactic meant to protract the matter, frustrate the Advocate and deny him the fruits of its Judgment. He contends that the Client/Applicant has failed to provide evidence that he was indeed ailing. He insists that the Client/Applicant has not succinctly explained the reasons for the delay in instituting objection proceedings within the prescribed time. He reiterates that the Client/Applicant has not satisfied the conditions set for granting stay of execution and the intended reference is a sham.
7. The two Applications were canvassed by way of written submissions.

### **Analysis and Determination**

8. Upon consideration of the Notice of Motion Application dated 11<sup>th</sup> July, 2023, Chamber Summons Application dated the 18<sup>th</sup> September, 2023, respective affidavits and rivaling submissions, the following are the issues for determination:
  - a. Whether time should be enlarged to allow the Client file an objection against the decision of the Taxing Officer dated the 23<sup>rd</sup> May, 2023.
  - b. Whether the Judgment should be entered for the Advocate and Decree issued for the taxed costs of Kshs 2,298,963.50.
9. The Advocate in their submissions relied on their respective Affidavits and contended that their Application was merited. They argued that the Client had not made out a case for stay of execution



as he had not made provisions for the due performance of the Decree. They insisted that the Client should not be granted leave to challenge the Taxing Officer's decision as no sufficient reasons have been provided. To support their arguments, they relied on the following decisions: *Musyoka & Wambua Advocates v Rustam Hira Advocate* (2006) eKLR; *Fina Bank Ltd v Spares and Industries Ltd* Civil Appeal No. 25 of 2000 LLR 5844 (CAK); *James Wangalwa & Another v Agnes Naliaka Cheseto* (2012) eKLR; *Forcin Motorcycle Co. Ltd v Ann Wambui & Another* (2018) eKLR; *Mwaura Karuga t/a Limit Enterprises v Kenya Bus Services Ltd & 4 Others* (2015) eKLR; *Equatorial Commercial Bank Ltd & 2 Others v Retreat Villas Limited* (2006) eKLR; *Andrew Shisala Angalushi v Zephaniah K. Yego & Aginga Asiligwa Chanzu* (2020) eKLR; *Suleiman Sumra & Another vs Said Mohamed Said* (2018) eKLR and *Joseph Oduor Anode v Kenya Redcross Society* (2012) eKLR.

10. The Client in his submissions reiterated his averments as per the respective Affidavits and argued that he had made out a case for enlargement of time to allow him file an objection against the Ruling of the Taxing Officer. He insisted that the Advocate's Application was incompetent and fatally defective. To support his averments, he relied on the case of *Wachira Karani v Bildad Wachira* (2016) eKLR.
11. As to whether time should be enlarged to allow the Client file an objection against the decision of the Taxing Officer dated the 23<sup>rd</sup> May, 2023.
12. The Client has sought for enlargement of time to enable him file an objection against the Taxing Officer's decision dated the 23<sup>rd</sup> May, 2023, which application has been opposed by the Advocate.
13. Rule 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."
14. In the current scenario, the Client has lodged an Application seeking to enlarge time after 116 days. It was the Client's contention that he was unwell hence unable to instruct his Advocate for file objection against the Taxing Officer's decisions. The Advocate opposed the application insisting that it was geared towards denying them the fruits of the Judgment.



15. In the case of *Fabim Yasin Twaha v Timamy Issa Abdalla & 2 Others* [2015] eKLR the Supreme Court, highlighted the general principles on extension of time and stated that: -

As regards extension of time, this Court has already laid down certain guiding principles. In the Nick Salat case, it was thus held:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

1. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;
2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents, if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

16. I note the Client’s Advocate was present when the impugned Ruling by the Taxing Officer was delivered. Further, the Client has not annexed any medical reports to confirm he has been unwell. He has further not stated when he was informed of the outcome of the Taxation of the impugned Bill of Costs. From the explanation offered, I note the Client only proceeded to file the instant Application perhaps, after he had been served with the Advocate’s Application seeking to have Judgment entered for the certified costs. It is my considered view that the burden of proof was upon him to demonstrate to court that he had indeed been so unwell and not able to contact his advocate so as to proceed to file an objection to the taxed costs, but he failed to do so. At this juncture, I find that the reasons given by the Client are not plausible. I further find the delay inordinate and inexcusable. In the circumstances, I will decline to enlarge time to allow the Client to file an objection against the decision of the Taxing Officer dated the 23<sup>rd</sup> May, 2023.

17. As to whether the Judgment should be entered for the Advocate and Decree issued for the taxed costs of Kshs 2,298,963.50.



18. On adoption of Certificate of Costs as Judgment of Court, Section 51(2) of the [Advocates Act](#) provides inter alia:-

The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

19. In the case of [Lubulellah & Associates Advocates vs N. K. Brothers Limited](#) [2014] eKLR the court stated that:-

The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter Judgment.”

See also the case of [Otieno, Ragot & Company Advocates v Kenya Airports Authority](#) [2021] eKLR.

20. In this instance, the Advocate seeks for adoption of the Certificate of Costs as Judgment of Court. I note the Client has opposed the instant Application arguing that it is frivolous, vexatious and an abuse of the court process. Further, that the cited provisions of the law does not allow the Advocate to seek for the said orders. I note the cited legal provisions include section 3A of the [Civil Procedure Act](#) which provides that:-

Saving of inherent powers of court. Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

21. From the above cited legal provisions, I opine that this Court has inherent power to deal with the matter herein, so as to meet the ends of justice and I find that this Application is not incompetent as claimed. It is trite that any party who opposes a decision by the Taxing Officer is expected to file an objection and thereafter a reference in accordance with the provisions of Rule 11 of the [Advocates Remuneration Order](#). It is my considered view that since the costs have been taxed and a Certificate of Costs issued, then the provisions of Section 51(2) of the [Advocates Act](#) would apply and the said certificate entered as Judgment of the court and a Decree issued to that effect. I hence find that the Advocate is entitled to the orders as sought.

22. It is against the foregoing that I find the Chamber Summons Application dated the 18<sup>th</sup> September, 2023 unmerited and will dismiss it with costs. I find the Notice of Motion Application dated the 11<sup>th</sup> July, 2023 merited and will allow it. I proceed to make the following final orders:-

- i. That Judgment be and is hereby entered against the Respondent (Client) for a sum of Kshs 2,298,963.50 being the taxed and certified costs payable to the Applicant by the Respondent.
- ii. Costs of the two Applications are awarded to the Advocate.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 5<sup>TH</sup> DAY OF MARCH, 2024**

**CHRISTINE OCHIENG**

**JUDGE**



In the presence of;

Ngolya for Client

Munyao for Advocate

Court Assistant – Simon/Ashley

