



Muri Mwaniki & Wamati Advocates v Museum View Office Suites Limited (Environment and Land Miscellaneous Application 28 of 2018) [2023] KEELC 431 (KLR) (1 February 2023) (Ruling)

Neutral citation: [2023] KEELC 431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 28 OF 2018
A NYUKURI, J
FEBRUARY 1, 2023**

BETWEEN
MURI MWANIKI & WAMATI ADVOCATES ADVOCATE
AND
MUSEUM VIEW OFFICE SUITES LIMITED CLIENT

RULING

Introduction

1. Before court is a Chamber Summons application dated May 18, 2021, filed by the client/applicant seeking the following orders;
 - a. The time limited for filing a reference under paragraph 11 (2) of the Advocates (Remuneration) Order be and is hereby enlarged.
 - b. That this application be deemed to have been duly filed within such enlarged time.
 - c. That in the alternative to prayer (2) above the honourable court be pleased to grant the applicant leave to file a fresh reference within such enlarged time.
 - d. That the decision of the taxing officer delivered on July 3, 2019 as far as the same relates to taxation of the bill of costs dated February 17, 2018 be and is hereby set aside.
 - e. That the honourable court be pleased to refer the matter back to the taxing officer for re-taxation of the bill of costs aforesaid and with proper directions thereof.
 - f. That the costs of this application be borne by the Respondent.
2. The application was anchored on the grounds on its face as well as the supporting affidavit sworn by John K Wambugu, a director of Museum View Office Suites Ltd, the client/applicant. The applicant's case is that the taxing officer erred in principle in arriving at a decision that was contrary to the



applicable law. Further, that the advocate admitted having been paid by the client and was estopped from asking for further fees. They further asserted that the taxing officer failed to take into account fees already paid to the advocate and failed to deduct the same from the final taxed award and that she failed to consider relevant factors like parties' interests, and subsisting oral agreements of the parties and that it is only fair and equitable that the taxed bill of costs be set aside.

3. The application was opposed. Martin K Mwaniki, an advocate of the High Court of Kenya practising as such in the form of Muri Mwaniki, the advocate/respondent herein swore a replying affidavit dated October 21, 2021 in response to the application. The advocate's case is that the client/applicant had instructed the advocate/respondent to act on their behalf on two separate and distinct transactions. Further, that the advocate received instructions for the first transaction vide a letter dated January 15, 2014, for transfer of L R no 16115, which letter did not mention a charge. That the advocate acted on the instructions above and the fee note was duly settled by the client.
4. The advocate further stated that vide a letter dated March 27, 2014, he received instructions for the second transaction to prepare and perfect a charge over LR no 12715/402 in favour of Jamii Bora Bank for a facility of kshs 570,000,000/-. That the advocate finalized the transaction, forwarded the charge to the bank and raised a fee note dated February 9, 2018 which remains unsettled to date. The advocate conceded that he does not dispute payments made in respect to the 1st transaction relating to the transfer.
5. It was the advocate's position that the allegation by the client that the parties entered into an oral agreement for payment of kshs 2,500,000/- for the two transactions is misleading as instructions in respect of the same were given at different times and attracted different fees. According to the advocate, section 45 (1) of the Advocates Act provides that for there to be an agreement on advocate's fees, the same must be in line with the fees provided in the Remuneration Order, and that it ought to be in writing and signed by the client, which was not the case herein.
6. The advocate also stated that the taxing officer was right in not taking into account the sums paid earlier by the client being kshs 2,384,085/-. He insisted that there was no meeting of mind between the parties in respect of fees payable for the charge. The advocate's view was that the doctrine of estoppel does not apply in this case as the advocate did not conduct himself in a manner to mislead the client that the work done was free of charge, save for payment of stamp duty. Further, that acceptance of monies paid by the client does not amount to admission of an agreement.
7. The application was canvassed by way of written submissions. On record are the client's submissions filed on January 21, 2022, which I have taken into consideration.

Analysis and determination

8. I have carefully considered the application, the replying affidavit and submissions. The two issues that emerge for determination are as follows;
 - a. Whether there is justification for the court to extend time for the client to filing a reference against the taxing officer's decision made on July 3, 2019.
 - b. Whether this court should set aside the taxing officer's decision dated July 3, 2019.
9. Although the client's first prayer in the Chamber Summons under consideration is for extension of time to file a reference in respect of the taxing officer's decision made on July 3, 2019, neither the client nor the advocate made any reference to that prayer in their grounds and affidavits in support of their prayer and against the prayer. They both only addressed the second issue.



10. Principles for extension of time are well settled. Extension of time is not a right of any party, and therefore, an applicant for an order for extension of time bears the burden of presenting to court the justification for such extension by first giving reasons for delay and demonstrating that the extension would be in the interests of justice. In the case of *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others*, Supreme Court of Kenya held as follows;

- “(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 for 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) whether there is reasonable reason for delay. The delay should be explained to the satisfaction of the court.
- (5) Whether there will be any prejudice suffered by the Respondent if the extension is granted.
- (6) Whether the application has been brought without undue delay; and
- (7) Whether in certain cases, like election petition, public interests should be a consideration for extending time.”

11. Paragraph 11 of the Remuneration Order provides for the steps to be taken and timelines required, by a party who is dissatisfied with and wishes to oppose the decision of a Taxing Officer; as follows;

11. Objection to decision on taxation and appeal to Court of Appeal;

1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision gave 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 objection the reasons for his decision on those items and the objection 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 sub section (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) of subparagraph (2) for taking of any step; application for such an order may be made by Chamber Summons upon giving 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 the time sought to be enlarged may have already expired.

12. Essentially therefore, where a party is aggrieved by the taxing officer’s decision and intends to object to the same, they ought to seek for reasons from the taxing officer within fourteen days of the decision. Upon receipt of the reasons, they ought to file their objection in fourteen days. In the instant application, the taxing officer made her decision on July 3, 2019, while the application for extension



of time was filed on May 19, 2021, which is a period of 21 months. The client did not attempt to give any single reason for the delay of 21 months. This court cannot speculate on why the client took 21 months to seek for extension of time.

13. The court's power to extend time is discretionary and can only be exercised in favour of a deserving party as the same is not a right. Even where the other party has not addressed the issue like in this matter, the burden to justify the extension of time remains on the applicant who must give an explanation for the delay to the satisfaction of the court. In my view, a delay of 21 months is an inordinate delay and in the absence of an attempt to explain the reasons for the delay, it is my finding that the client is undeserving of the orders for extension of time for filing reference in this matter.
14. In the premises, I find and hold that the Chamber Summons dated May 18, 2021, lacks merit and the same is hereby dismissed. I make no order as costs as the advocate did not address the issue of extension of time.
15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 1ST DAY OF FEBRUARY 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A NYUKURI

JUDGE

In the presence of;

Mr Eredi for the respondent

No appearance for the applicant

Josephine – Court assistant

