



Maragara v Kamurara (Sued as the legal representative of the Estate of Mwangi Kamurara Mathigi (Deceased) (Environment and Land Appeal 16 of 2018) [2023] KEELC 16248 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16248 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL 16 OF 2018**

YM ANGIMA, J

MARCH 9, 2023

BETWEEN

STEPHEN MWIHIA MARAGARA APPELLANT

AND

MWANGI MACHARIA KAMURARA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MWANGI KAMURARA MATHIGI (DECEASED) RESPONDENT

RULING

A. The Appellant's Application

1. By a chamber summons dated August 10, 2022 brought under Order 11 rule 4 of the *Advocates Remuneration Order* and any other enabling provisions of the law, the appellant sought an extension of time within which to lodge a notice to the taxing officer indicating his objection to the items of taxation of his bill of costs which was taxed on May 13, 2022.
2. The application was based upon the grounds set out on the face of the summons and the contents of the supporting affidavit sworn by the Appellant on August 10, 2022 and the exhibits thereto. The Appellant contended that his advocates were supplied with a copy of the ruling made on May 13, 2022 on July 20, 2022 by which time the period for raising an objection had lapsed. The Appellant was desirous of objecting to various items in his bill of costs which were taxed off hence the application.

B. The Respondent's Response

3. The Respondent filed a replying affidavit sworn on September 1, 2022 in opposition to the application on various grounds. First, it was contended that the Appellant was guilty of undue delay which had not been explained. It was asserted that the Appellant's advocates were present in court when the ruling on taxation was delivered and there was no good reason for failing to lodge his objection in time. It was



further stated that there was no evidence on record to demonstrate that an application for the ruling was made within 14 days of its delivery. It was further contended that even after receiving a copy of the ruling on July 20, 2022 no action was taken by the Appellant for more than a month thereafter.

4. The second reason was that the Appellant had not demonstrated that the taxing officer had committed any error of principle in the taxation. The third ground was that that matter had been pending in court for a long time hence keeping it alive for much longer would be prejudicial to him. The court was consequently urged to dismiss the application with costs.

C. The Appellant's Rejoinder

5. The Appellant filed a supplementary affidavit sworn on September 14, 2022 the response to the replying affidavit. It was contended that upon obtaining a copy of the ruling on July 20, 2022 it was found that there was no reasons for the taxation therein. The Appellant further stated that he was unable to access a copy of the ruling on taxation because the relevant file was never returned to the registry by the taxing officer. The Appellant therefore prayed that his application should be allowed.

D. Directions on Submissions

6. When the application was listed for directions it was directed that the same should be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Appellant's submissions were filed on November 28, 2022 whereas the Respondent's submissions were filed on November 17, 2022.

E. The issue for determination

7. The court has considered the Appellant's application dated August 10, 2022, the Respondent's replying affidavit in opposition thereto as well as the supplementary affidavit. The court is of the opinion that the main question for determination is whether the Appellant has made out a case for extension of time to file his notice of objection out of time.

F. Analysis and Determination

8. The court has considered the material and submissions on record. The Appellant submitted that the delay in objecting to the taxation was not deliberate but was occasioned by the delay on the part of the taxing officer to avail a copy of the ruling and reasons for the taxation on the items intended to be objected to. The appellant relied upon the cases of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission and 7 others* [2014] eKLR, *Independent Electoral & Boundaries Commission v John Omollo t/a Ganijee & Sons* [2021] eKLR and *Shah & Parekh v Kenindia Assurance Co Ltd* [2021] eKLR in support of the application.
9. The Respondent, on the other, submitted that the Appellant had failed to satisfy the requirements for the extension of time sought. It was submitted that the Appellant was not diligent in taking steps to file his objection to the taxation within the prescribed period or soon after receiving a copy of the ruling on taxation. It was submitted that the Appellant had failed to explain the lengthy period of delay in complying with the timelines of paragraph 11 of the Advocates Remuneration Order hence his application should be denied. The Respondent relied upon the cases of *Moses Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] eKLR and *County Government of Tana River v Miller & Company Advocates* [2021] eKLR among others in opposition to the application.



10. The factors to be considered in an application for extension of time were summarized in the *Nicholas Kipto Arap Korir Salat* case (*supra*) whereby the factors were stated thus:
 - i. 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.
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 - iii. Whether the court should exercise the discretion to extend time, is a consideration on a case by case basis.
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
 - v. Whether there will be any prejudice suffered by the Respondents if the extension is granted.
 - vi. Whether the application has been sought without undue delay.
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
11. The court has considered all the material on record. The Appellant's allegation that his failure to comply with the stipulated timelines is not borne out by the record. There is no evidence on record to support the allegation that the taxing officer withheld the ruling or court file for over 2 months. There is no letter in the file requesting for a copy of the ruling of the taxing officer dated May 13, 2022. There is no letter from the Appellant complaining that the court file could not be traced at the registry and that time was running out on him to lodge his intended objection. The only letter on record is the letter of August 3, 2022 seeking reasons and that is the only letter which the Appellant has exhibited in his supporting affidavit.
12. The court is not satisfied that the Appellant has rendered a reasonable and satisfactory explanation for the delay. It has not also been explained why the Appellant had to wait until August 17, 2022 to file the instant application for extension of time to give his notice of objection whereas he collected the ruling on July 20, 2022. It is evident that the Appellant was not a diligent litigant and the instant application may have been filed as an afterthought. The Appellant is not deserving of indulgence by the court in the circumstances.
13. The court has further noted that the appeal has been in court since 2018 and it was an interlocutory appeal. The court is of the opinion that it would be prejudicial to the respondent to keep the matter in court for much longer due to lack of diligence on the part of the Appellant. The parties are better off litigating over the substantive dispute before the trial court.

G. Conclusion and Disposal Order

14. The upshot of the foregoing is that the court finds no merit in the Applicant's application for extension of time to lodge his notice of objection under paragraph 11(4) of the *Advocates Remuneration Order*. Accordingly, the chamber summons dated August 10, 2022 is hereby dismissed with no order as to costs.
15. It is so ordered.

RULING DATED AND SIGNED AT NYAHURURU THIS 9TH OF MARCH, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.



YM ANGIMA

JUDGE

In the presence of:

Ms Wanjiru Muriithi for the Appellant

Mr Ndegwa for the Respondent

C/A - Carol

