



**Miller & Company Advocates v China Road & Bridge Corporation (Environment and Land Miscellaneous Application 65 of 2019) [2023] KEELC 20410 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20410 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 65 OF 2019  
JA MOGENI, J  
OCTOBER 3, 2023**

**BETWEEN**

**MILLER & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**CHINA ROAD & BRIDGE CORPORATION ..... CLIENT**

**RULING**

1. Before me for determination is a Chamber Summons application dated 23/05/2023 filed by Prof. Albert Mumma & Company Advocates on behalf of the Client/Applicant, brought under Rule 11, 13 & 70 of the *Advocates [Remuneration] Order of the Advocates Act* Cap 16, Section 1A, 1B, 3A & 63(e) of the *Civil Procedure Act*, Sections 32, 40, 48 and 51 of the *Advocates Act* and all other enabling provisions of the law. The Client/Applicant is seeking the following orders:
  - a. Spent.
  - b. Spent.
  - c. This Honourable Court be pleased to enlarge time for the Client/Applicant to file a Notice of Objection to the taxation proceedings herein together with reference to this Honourable Court against the Certificate of Taxation issued on the 20/02/2023 and all consequential processes arising therefrom.
  - d. The Application herein be admitted as a reference against the taxation proceedings and the Honourable Court be pleased to set aside the Certificate of Taxation issued on the 20/02/2023 and all consequential processes arising therefrom and, in its place, allow the Client/Applicant file its response contesting the Bill of Costs.
  - e. Costs of the application be awarded to the Applicant.



2. The application is premised on the grounds stated in paragraphs (1) to (8) on the face of the application and the annexed affidavit sworn on 23/05/2023 by Cui Jay; counsel from the firm representing the Client/Applicant.
3. The Application is opposed. The Advocate/Respondent responded to the Chamber Summons application through the Replying Affidavit by Beatrice Kwamboka, counsel on record for the Advocate/Respondent herein, sworn on 30/06/2023.
4. By consent of the parties, it was agreed that the Chamber Summons Application be dispensed with by way of written submissions. The Advocate/Respondent filed its written submissions on 19/07/2023 while there were no submissions on record by the Client/Applicant.
5. I have considered the Applicant's application together with the rival affidavits filed. I have also considered the Applicant's written submissions and the authorities cited in support of the same. The main issue for determination is whether the applicant is entitled to orders for enlargement of time within which to file a notice of objection.
6. The issue in contention in the instant application is the Certificate of Taxation dated 20/02/2023 awarded in favour of the Advocate/Respondent. The Applicant seeks for enlargement of time to file a Notice of Objection to the taxation proceedings together with a reference. The Client/Applicant essentially avers that they were never served with the purported Bill of Costs or any notice inviting them to participate in the proceedings before the Taxing Master. They contend that the delay in filing the Notice of Objection together with the reference was not in bad faith as the same singularly arose from the fact that the Advocate has never served the Client with the bill of costs, the date for taxation and/or delivery of the Ruling in respect to the Bill of Costs to enable the Client/ Applicant participate in the same.
7. The substantive law regarding extension of time to file reference from taxing officer's decision is provided under Clause 11 of the Advocates' Remuneration Order 2009.
8. Clause 11 of the [Advocates' Remuneration Order](#) 2009 grants the court the discretion to extend time for lodging a reference from the taxing master's decision on costs notwithstanding the expiry of the 14-day period prescribed for the reference. Paragraph 11 of the [Advocates' Remuneration Order](#) provides 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 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.
9. Paragraph 11(4) of the [ARO](#) provides that:
  - “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.”

10. In *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] eKLR it was held that: -

“The under-lying principles that a Court should consider in exercise of such discretion:

- a. 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;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- e. Whether there will be any prejudice suffered by the respondents if the extension is granted;”

11. On the issue of delay, Mohammed J. (as he then was) held as follows in *George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others* [2014] eKLR: -

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”

12. The same position was taken in *Stanley Kaboro Mwangi & 2 Others v Kanyamwi Trading Company Limited* [2015] eKLR where the court was of the view that: -

“A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercised.”

13. The common thread that runs through the above cited decisions is that the court is clothed with the discretion of allow an application for extension of time where the applicant demonstrates that there was sufficient cause for the delay. In the instant case, it is not in dispute that the Notice of Objection herein was not filed within the stipulated time.

14. In the present case, the Applicant explained that the delay in filing the Notice of Objection together with the reference was not in bad faith as the same singularly arose from the fact that the Advocate has never served the Client with the bill of costs, the date for taxation and/or delivery of the Ruling in respect to the Bill of Costs to enable the Client/ Applicant participate in the same.

15. A perusal of the record reveals that the Applicant was served with the bill of costs dated 23/04/2019 and they failed to appear in court and oppose the same. The return of service dated 30/05/2019 sworn by on Sollo S. Nzuki describes that he effected service of the bill of costs upon the Applicant at their premises on Hatheru Road, Lavington but an agent of the Applicant refused to sign the copy and



acknowledge receipt of the service. The said Affidavit of Service dated 30/05/2019 has been adduced before this Court by the Respondent and marked as BK-1.

16. Furthermore, the Respondent's counsel deponed that on 13/06/2019, the matter came before the Deputy Registrar to take a date for Ruling on the said Bill of Costs, the court directed that the ruling would be delivered on 22/07/2019, however, on the said date the matter was not cause listed. Counsel annexed and produced a copy of a letter dated 28/08/2019 from Miller & Company Advocates to the Deputy Registrar informing them of the same date. It appears that Counsel followed up on the date for the Ruling severally to no avail. It was not until an email from the Deputy Registrar on 9/05/2022, that it was confirmed that a Ruling on the Bill of Costs was delivered on 1/10/2019. Counsel adduced the said email correspondence marked BK-7 in support of her allegations.

17. The Court in *Shah & Parekh Advocates v Kenindia Assurance Company Limited* [2020] eKLR held that the Deputy Registrar was duty bound to give the parties adequate notice of the Ruling on taxation and that the failure to do so was sufficient cause to justify the exercise of the court's discretion to extend the time within which a party was allowed an opportunity to file an objection or reference. The court rendered itself thus: -

“The Deputy Registrar ought to have published or served notices on the parties at least three days before the date ruling was delivered. As this was not done, the applicant's claim that it only became aware of the ruling on 24/06/2019 after the days limited for filing of an objection had expired is plausible.

In view of the foregoing, I find that the applicant has established that its failure to file an objection or reference within the prescribed time was not deliberate and was not caused by lack of diligence on its part. I am thus satisfied that the applicant has demonstrated sufficient cause to justify the exercise of the court's discretion in its favour and is entitled to the orders sought.”

18. However, that is not the case in this matter. What emerges from the above is that the Applicant was duly served with the bill of costs dated 23/04/2019 but both parties were not notified of the taxation date after the Ruling date slated for 22/07/2019 was not in the cause list. I am not satisfied that the Applicant has made out a case for granting of the orders of extension of time within which to file the reference. The Applicant denies service of the bill of costs all together from the beginning. Which is not the case as it has been established and demonstrated that the Applicant was duly served in its premises and its agent refused to sign the copy and acknowledge receipt of the impugned bill of costs. If the Applicant had admitted and/or concede that they were in receipt of the bill of costs but lost track of the case wherein it is evidently clear that it took time before the taxation master informed/notified the Respondent that the taxation Ruling had already been issued on 1/10/2019, I would have been inclined to grant the extension of time.

19. All in all, I am not inclined to extend time as prayed by the Client/Applicant and dismiss the application dated 23/05/2023 with costs to the Advocate/Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 3<sup>RD</sup> DAY OF OCTOBER 2023.**

.....

**MOGENI J**

**JUDGE**



In the Virtual presence of:-

Mr Ochieng holding brief for Mr Ochieng Bryan for Client/ Applicant

Ms. Mushoka holding brief for Mr. Miller for Advocate/Respondent

