



**Cherutich v Mburu & 5 others (Environment & Land Case
4 of 2013) [2023] KEELC 21354 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 4 OF 2013
EO OBAGA, J
NOVEMBER 9, 2023**

BETWEEN

SHADOCK CHEPKIYENG CHERUTICH PLAINTIFF

AND

SAMMY MUIRURI MBURU 1ST APPLICANT

HESBON MOKONO 2ND APPLICANT

DAVID SONGOK LAGAT 3RD APPLICANT

DISTRICT LAND REGISTRAR 4TH APPLICANT

ATTORNEY GENERAL 5TH APPLICANT

EQUITY BANK LIMITED 6TH APPLICANT

RULING

1. This is a ruling in respect of a notice of motion dated 7.7. 2023 in which the 1st and 3rd Judgement Debtors/Applicants seek the following orders:-
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. The honourable court be pleased to enlarge time within which the applicants the 1st and 3rd Defendants may pursue a reference from the decision of the Deputy Registrar/the taxing master made on 28/4/2023.



6. Costs of the application be in the cause.
2. The Applicants contend that they were unaware that the costs which were awarded had been taxed. They only became aware when warrants of attachments had been issued. When they contacted their previous lawyer, he informed them that the bill of costs had been taxed without his knowledge.
3. The Applicants contend that they have good grounds to file a reference and that there will be no prejudice on the part of the Respondent if extension of time is granted.
4. The Applicant's application was opposed by the Plaintiff Decree Holder/Respondent based on a replying affidavit sworn on 25.7.2023. The Respondent contends that the Applicant's application is frivolous, vexatious, incompetent and amounts to an abuse of the process of court. He further contends that the application is meant to delay realization of costs.
5. The Respondent states that the bill was duly served upon the Applicants' Advocate and that during taxation and reservation of the ruling date, the Applicants were represented by counsel.
6. The parties were directed to file submissions. The Applicants were given 14 days to file and serve submission with effect from 27/7/2023. The Respondent was to file submissions within 14 days of being served with the Applicants' submissions. The Applicants did not file any submission. The Respondent filed submissions on 3/10/2023.
7. I have considered the Applicants' application, the opposition to the same by the Respondent as well as the submissions by the Respondent. The only issue for determination is whether the Applicants have demonstrated that they have grounds which will persuade the court to exercise discretion in favour of extension of time.
8. The Supreme Court of Kenya set out the principles which a court should consider in an application for extension of time in the case of *Nicholas Kiptoo Korir Arap Salat -vs- IEBC & 7 others* (2014) eKLR. The Court stated as follows:-

The underlying principles a court should consider in exercise of such discretion should include: -

- a. Extension of time is not a right of any 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 by 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 Respondent if the extension is granted;
 - f. Whether the application has been brought without undue delay.
9. In the instant case, the Applicants are claiming that when warrants of attachment were out, they contacted their previous lawyer who informed them that taxation was done without his knowledge. The Respondent has annexed a copy of a bill which was duly received by their advocate. On the date of



taxation, the Applicants' current Advocate was present. It is therefore not true that taxation was done without the Applicants' lawyers' knowledge.

10. A case belongs to a client and not a lawyer. It is the duty of a litigant to keep checking on his lawyer for update of his case. In the case of *Duale Mary Ann Gurre –Vs- Amina Mobamed Mohamood & Another* eKLR Justice Mutungi stated as follows:-

“An advocate is the agent of the party who instructs him and such instructing client as the principal continues to have the obligation and the duty to ensure that the agent is executing the instruction given. In the case of litigation, the suit belongs to the client and the client has an obligation to do follow up with his Advocate to ensure the Advocate is carrying out the instruction as given. The litigation does not belong to the Advocate but to the client. If the advocate commits a negligent act the client has an independent cause of action against the Advocate.”

11. The ruling on the bill of costs was delivered on 28.4.2023. The lawyer who is now representing the Applicants was aware of the date but he chose not to attend court for the ruling. The Applicants' current lawyer had taken over from the Applicants' previous lawyers by filing a consent on 27.2.2023. The Application for extension of time was filed on 10.7.2023.
12. The Applicants' lawyer was under obligation to seek for reasons from the taxing officer latest by 12.5.2023. He did not do so. This application was filed almost two months after the expiry of the 14 days. The explanation given is not convincing. Infact the Applicants are economical with the truth. They do not deserve the exercise of discretion of the court.

I find the Applicants' application devoid of merit. The sane is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF NOVEMBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Kibii for Decree Holder/Respondent.

Mr. Odongo for 4th and 5th Respondent.

Court Assistant –Laban

E. O. OBAGA

JUDGE

9TH NOVEMBER, 2023

