



REPUBLIC OF KENYA



**KENYA LAW**  
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**Murunga & another v Juma (Environment and Land Miscellaneous Application  
E003 of 2022) [2022] KEELC 12797 (KLR) (4 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 12797 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2022  
DO OHUNGO, J  
OCTOBER 4, 2022**

**BETWEEN**

**KURUSHEM MURUNGA ..... 1<sup>ST</sup> APPLICANT**

**DANIEL WERE MURUNGA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MILTON ABIL JUMA ..... RESPONDENT**

**RULING**

1. By Chamber Summons dated February 2, 2022, the applicants seek the following orders:
  1. [Spent]
  2. [Spent]
  3. [Spent]
  4. The Honourable court be pleased to enlarge the time stipulated under the *Advocates Act* to object to the decision of the taxing officer dated September 22, 2021 in The Environment and Land Court Case No.38 of 2019.
  5. The costs of this application be provided for.
2. The application is supported by an affidavit sworn by the second applicant. He deposed that the applicants were the defendants in Kakamega ELC No. 38 of 2019, which suit was determined in favour of the respondent with an order that each party was to bear own costs. That they later applied for stay of execution pending appeal and that their said was dismissed with costs on November 24, 2020. Thereafter, the respondent filed bill of costs dated 2<sup>nd</sup> December 2020 in respect to the dismissed application, which bill was taxed on September 22, 2021 at KShs 125,200. He went on to state that no proper notice of the bill was served upon the applicants and that their former advocates did not



notify them of the taxing master's decision. That they only learnt of the decision upon being served with a notice to show cause long after the period of objecting had lapsed. That the taxed costs of KShs 125,200 is manifestly excessive and that they have filed an appeal at the Court of Appeal at Kisumu being Civil Appeal No. 24 of 2021 which is pending.

3. The respondent filed grounds of opposition in which he took the position that the application is scandalous, frivolous, vexatious and or fundamentally defective since it was filed by a firm which is not properly on record contrary to Order 9 Rule 9 of the Civil Procedure Rules; that the application may 'prejudice or embarrass the jurisdiction' of this court since they offend Clause 11 (1) of the Advocates Remuneration Order; and that the application is an abuse of the court's process.
4. The application was canvassed through written submissions. The applicants referred to the taxation ruling that was annexed to their supporting affidavit and noted that the ruling indicates that it was delivered in the absence of parties, hence they did not have notice of its delivery. That they could not have objected to the decision of the taxing master without having had notice of the taxation or the ruling. They further argued that the respondent has not filed any affidavit and has not offered any proof of his claim that counsel for the applicants is not properly on record. They relied on the case of *Machira and Company Advocates v Magugu* [2002] 2 EA 248 at page 422 and urged the court to allow their application.
5. The respondent's submissions contained some parts which were attempts at giving evidence regarding such matters as service of notice of taxation, representation, and the circumstances in which the date of taxation and ruling were given. I have disregarded those since it is not permissible to introduce evidence by way of submissions.
6. The respondent argued that there has been inordinate delay since the present application was filed over four to five months after the taxation. The respondent relied on the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others without giving any citation and the case of *George Mwende Muthoni vs Mama Day Nursery and Primary School*, Nyeri CA No 4 of 2014, (UR), and argued that the applicants failed to explain the delay. The respondent therefore urged the court to dismiss the application with costs.
7. I have considered the application, the supporting affidavit, the grounds of opposition and the parties' respective submissions. Principles applicable to an application for enlargement of time were discussed by the Supreme Court in the case of in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR as follows:

This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of 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 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 a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;



5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; ...
8. Dealing with the same subject, the Court of Appeal stated in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted.

9. Applying the above principles to the present application, I note that the ruling sought to be appealed against was delivered on September 22, 2021 while the present application was filed on February 3, 2022, slightly over four months after the ruling. Pursuant to Rule 11 (1) of the *Advocates (Remuneration) Order*, the applicant was required to give notice in writing to the taxing officer of the items of taxation to which he was objecting within fourteen days from September 22, 2021, or by October 6, 2021. Considering the date of filing of the present application, there was a delay of slightly less than four months. Rule 11 (4) of the *Advocates (Remuneration) Order* empowers this court to enlarge the time fixed for giving notice to the taxing officer or for filing a reference to the judge.
10. The reasons offered for the delay is that no proper notice of taxation was given, that the applicants' former advocates did not notify them of the taxing master's decision and that the applicants only learnt of the decision upon being served with a notice to show cause 'long after the period of objecting had lapsed.' The respondent did not file any replying affidavit to controvert the facts deponed to by the applicants. In the circumstances, I have no reason to doubt the evidence placed before the court by the applicant. I have also looked at both the bill of costs and the ruling and I find that it is in the interest justice that the applicants be given an opportunity to have their day in court as they have sought. I do not see any prejudice to the respondent by such a recourse. In short, the applicants have demonstrated an adequate basis to warrant exercise discretion in their favour.
11. In view of the foregoing, I make the following orders:
- a. Time within which to object to the decision of the taxing officer dated September 22, 2021 is hereby enlarged.
  - b. The applicants to give notice in writing to the taxing officer of the items of taxation to which they object within fourteen days from the date of this ruling.
  - c. Upon the applicants complying with (b) above and upon the taxing officer giving the reasons for her decision, the applicants to file a reference within the period stipulated by Rule 11 (2) of the *Advocates (Remuneration) Order*.
  - d. In default of the applicants complying with either (b) or (c) above, Chamber Summons dated 2nd February 2022 shall stand dismissed with costs to the respondent.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 4TH DAY OF OCTOBER 2022.**

**D. O. OHUNGO**

**JUDGE**

**Delivered in open court in the presence of:**



**Mr Shivega holding brief for Mr Amasakha for the applicants**

**No appearance for the respondent**

**Court Assistant: E. Juma**

