



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**

**E.L.C REFERENCE NO. 2 OF 2019**

**SUMMER MEADOWS LIMITED.....APPLICANT**

**VERSUS**

**KEMBI GITURA**

**NJOKI GACHICHI**

**T/A KEMBI GITURA & COMPANY ADVOCATES.....RESPONDENTS**

**RULING**

**The Chamber Summons dated the 23/4/19**

1. The Applicant through a Chamber Summons application dated 23<sup>rd</sup> April 2019 and brought under Order 51 Rule 1 of the Civil Procedure Rules filed the instant for orders that;

- a. Spent.
- b. That there be a stay of execution of the Certificate of taxation pending hearing and determination of the Reference.
- c. That this honourable Court enlarges the time within which to file a reference against the decision of the taxing officer delivered on 27<sup>th</sup> February 2019.
- d. That the Reference filed herein be deemed as properly filed though filed out of time
- e. That the Certificate of taxation dated 27<sup>th</sup> February 2019 be set aside.
- f. That costs if this application be borne by the Respondent.

2. The following are the grounds for the application;

- a. The Respondent filed its Bill for taxation on 6<sup>th</sup> July, seeking the sum of Kshs. 6,139,500/- as legal fees for professional services rendered for the Applicant, Summer Meadows Limited No. PVT/2016/007370 in the Purchase of Title No. Nginda/Samar Block 2/287 from Nicola Farms Limited of a consideration of Kshs, 333,000,000/-
- b. The Applicant opposed the bill and submitted that the Respondent was entitled to a maximum of Kshs. 700,000/-
- c. The Applicant received a letter from the Respondents indicating that the matter had been taxed but did not receive a notice from the Deputy Registrar.
- d. Upon perusal of the file by the Applicant, it was discovered that the Honourable Deputy Registrar delivered his ruling on 27<sup>th</sup> February 2019 wherein he taxed the Bill as kshs. 2,763,000/-
- e. It was also discovered that there was a judgement or ruling notice dated the 22<sup>nd</sup> February, 2019 addressed to the parties herein detailing that judgement would be issued on 27<sup>th</sup> February, 2019.

f. This notice was never served to the attention of nor served upon the Applicant herein and was only discovered when perusal was carried out.

g. The Applicant wrote to the Court vide a letter dated 5<sup>th</sup> April 2019 inquiring whether the reasons for the taxation were now ready for collection but is yet to receive a response.

h. The Deputy Registrar is yet to issue the typed ruling stating the reasons for his decision.

3. Further that the taxing officer made the following errors of principle in relation to instruction fees;

a. The taxing officer failed to appreciate that under paragraph 18(f) of the Advocates Remuneration (Amendment) Order, 2014, the remuneration for business that has not been completed, the remuneration is to be that prescribed in schedule 5 and therefore the Respondent was only entitled to Kshs. 700,000/- as the instructions were not completed by the Respondents.

b. The taxing officer failed to appreciate fully that the transaction was not completed.

c. The taxing officer erred in assessing the instruction fees in the sum of Kshs. 2,763,000/- and adopted wrong principles in the exercise of his discretion.

4. The application is further supported by the affidavit of GIDEON MUTAI advocate being counsel for the Applicant. In his affidavit he largely reiterates the grounds on the face of the application and claims that they learnt of the taxed bill from the letter by the Respondent to the Applicant dated 12<sup>th</sup> February 2019 to which a copy of the certificate of taxation dated 5<sup>th</sup> April 2019 was attached. That they never received a notice from the Deputy Registrar notifying the Applicant on when the ruling would be delivered. That after perusal of the file the Applicant learnt that there was indeed a notice in the file dated 22<sup>nd</sup> February 2019 addressed to the parties which was never served on the Applicant. That after learning that the bill had been taxed and a ruling was delivered, the Applicant wrote to the Court vide a letter dated 15<sup>th</sup> April, 2019 requesting for a copy of the ruling and also did reminders dated 13<sup>th</sup> June 2018 and 18<sup>th</sup> July 2018 but is yet to receive a typed ruling from the Court stating the reasons for the decision. That the Applicant therefore lacked capacity to file a Reference within the statutory two-week period. He enjoins the Court to grant the orders sought in order to avoid punishing the Applicant for a mistake that was not of his own doing and in the interests of justice.

#### **The Chamber Summons dated the 9/5/19**

5. The Advocates/Respondent on their part did file a Chamber Summon application dated 9<sup>th</sup> May 2019 under section 11(2) and (4) of the Advocates Remuneration Order and all other enabling provisions of the Law for orders that;

a. This Honourable Court be pleased to enlarge the time within which to file a Reference against the decision of taxation on the amended Advocate /Client bill of costs by the Deputy registrar on 27<sup>th</sup> February 2019.

b. The costs of this application be provided for.

6. That application is premised on the following grounds;

a. That the amended Advocate/Client Bill of costs dated 24<sup>th</sup> October, 2017 filed by the Respondents came up for taxation before the taxing master on 6<sup>th</sup> December, 2017 when the parties agreed to proceed by way written submissions.

b. That on 24<sup>th</sup> January, 2018 the taxing master confirmed that the written submissions were in the Court file and directed that she would deliver her ruling on 14<sup>th</sup> March, 2018.

c. That on 14<sup>th</sup> March, 2018 the ruling was deferred to 28<sup>th</sup> March, 2018 and subsequently on 28<sup>th</sup> March, 2018 the ruling was deferred again to 11<sup>th</sup> April, 2018. When we attended Court on 11<sup>th</sup> April, 2018 we were informed that the ruling was not ready and that it would be delivered on notice issued by the Court.

d. That the taxing master without issuing any notices indicated delivered the ruling on 27<sup>th</sup> February, 2019 in the absence of parties.

e. That the said information became known to the Respondent upon perusal of the Court file at the registry.

f. That is in the interest of justice that the Respondent be allowed to file a reference against the award delivered on 27<sup>th</sup> February, 2019.

7. In her supporting affidavit Maureen Ng'ang'a Advocate in addition to reiterating the grounds on the face of the application explains the steps that were taken by the Court before the taxation Court delivered its ruling on the 27<sup>th</sup> February 2019 as per the Court proceedings and concedes that indeed the notice of the ruling was not served on the Respondent. That the Respondent became aware of the ruling while the statutory two weeks within which to file the reference had already lapsed. Due to that failure in notifying the Respondent of the ruling in time Counsel concedes that the Respondent ought to be allowed to file a notice of objection to the decision of the taxation delivered on 27<sup>th</sup> February, 2019 out of time.

8. Directions were given that a ruling would be delivered on the two applications on notice.

9. The gist of the two applications above is for extension/ expansion of time to the Client / Applicant who has expressed its desire to file an objection to the decision of the taxing master within which the Applicant can file an objection to the verdict. Both the Applicant and the Respondent concede that the Applicant was not notified of the ruling date as the notices were not served on the Applicant therefore the Applicant was not notified of the ruling in time. The Advocate / Respondent has however not disclosed how they became aware of the ruling date and if they were served with the notice.

10. Paragraph 11 of the Advocates Remuneration Order provides:

**“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 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.**

**(3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (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) 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 expired”.**

11. It is evidently clear that this Court has discretion to extend time for lodging a reference notwithstanding the expiry of the 14 days' period prescribed for the reference from the Taxing Master's decision on costs. However, in exercising its discretion in this regard, the Court should consider the circumstances causing the delay.

12. The Applicant has also explained and produced letters addressed to the Court requesting for the typed copies of the taxation ruling which they claim are yet to be supplied however there is a typed copy in the file. I also note that the Applicant has in its Applicant raised certain contentious issues in the manner in which the taxation master taxed the said bill. I note that Applicant's main contention is that the amount of costs awarded were excessive particularly stated under its ground number 9(c) thus “The taxing officer erred in assessing the instruction fees in the sum of Kshs. 2,763,000/- and adopted wrong principles in the exercise of his discretion.”

13. In the premises and based on the consent by parties herein I find that the Applicant has given sufficient reason why this Court should exercise its discretion to grant the order sought for enlargement of time within which to file a reference against the decision of Taxing Officer made on 27<sup>th</sup> February 2018.

14. The Applicant has also sought for an order of stay of execution of the Certificate of Taxation dated 5<sup>th</sup> April 2019 pending hearing and determination of the reference to be filed by the Applicant. Taxation of costs is part of the execution process. The same has not been opposed by the Respondent. In the interests of justice, to enable the filing of an appropriate Application for consideration by the Court, the Court will grant the Applicants a limited period of time to comply with the provisions of paragraph 11 of the Advocates Remuneration Order, and in the meantime order a stay of execution of the certificate of taxations of costs upon terms.

15. Both applications are hereby allowed.

16. Each to bear their own costs of their respective applications.

**Orders accordingly.**

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 4<sup>TH</sup> DAY OF JULY 2019.**

**J.G. KEMEI**

**JUDGE**

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

Ms Ndege HB for Mr. Wanjeri for the Applicant.

Ndegwa HB for Kembi Gitura Adv. for the Respondent.

Irene and Njeri, Court Assistants