



REPUBLIC OF KENYA



Gekanana & Company Advocates v Worhbune Family (Wartha) (Miscellaneous Application 71 of 2022) [2024] KEHC 8052 (KLR) (3 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS APPLICATION 71 OF 2022**

SM GITHINJI, J

JULY 3, 2024

BETWEEN

GEKANANA & COMPANY ADVOCATES ADVOCATE

AND

**WORHBUNE FAMILY (WARTHA) AS THE VENDORS KAKOLOKOL LIMITED
THINK FARMING LIMITED AND NUTGENCIES LIMITED APPLICANT**

RULING

1. Vide a chamber summons application dated 13/3/2023 that was brought under Article 159 of the Constitution of Kenya, Section 3A of the Civil Procedure Act and Rule 11 (4) of the Advocates Remuneration Order, the Applicant herein seek for orders: -
 1. That this honourable court be pleased to grant leave to the Applicants to file an objection out of time against the ruling of the taxing officer delivered on the 22nd of February, 2023.
 2. That the costs for this application be provided.
2. The Chamber summons is supported by the Affidavit of George Murimi Kihiu and the grounds on the face of the summons. In brief, the deponent stated that he is the Director of Kakolokol Limited authorized to swear the affidavit. He deposed that the delay in filing the objection was occasioned by his counsel whom he claimed was bereaved.
3. He added that their intended objection raises serious legal issues that need be addressed; that is, despite furnishing the taxing master with a letter from the Law Society of Kenya indicating that the Respondent last held a Practising Certificate in the year 2020, the taxing master proceeded to erroneously award the Respondent legal fees to the tune of Kshs. 780, 235/-.
4. In response, the Respondent filed grounds of opposition dated 22/8/2023 stating that: -



1. The application dated March 17, 2023 is misconceived, ill-advised and otherwise an abuse of the court process.
2. The applicant has failed to write to the taxing master to get reasons for the ruling and therefore the application is a non-starter.
3. The applicant fails to disclose sufficient reasons for the inordinate delay to file the application.
4. The application is made in bad faith to delay the respondent's legal fees.
5. Parties agreed to canvass the application by way of written submissions. Notably, only the Applicant did file submissions on 14/11/2023. I have considered the Applicant's submissions and do formulate this one issue for determination; -
 - i. Whether or not extension of time to file a reference should be granted.

Determination

6. Paragraph 11 of the *Advocates' Remuneration Order* provides for the procedure to be followed when a party intends to object the decision of a taxing officer as it is in the present case. That clause reads 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.
 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), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 5. 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.
7. It is trite that the Court enjoys wide discretionary powers under the *Civil Procedure Act* as stipulated in section 1A, 1B, and 3A on overriding objectives, inherent jurisdiction and on account of sufficient cause to exercise jurisdiction in matters of this nature in the interest of justice. While the *Remuneration Order* does not specify the factors to be considered in applications of this nature,



guidance may be obtained from case law. In the case of *Paul Wanjobi Mathenge -v- Duncan Gichane Mathenge*[2013]eKLR the Court of Appeal observed: -

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance...”

8. It follows therefore that the length and reasons for the delay are important factors to consider while exercising discretion. In the present case, the decision of the taxing officer was delivered on 22/2/2023 and the application for extension of time lodged on 20/3/2023. The delay in filing the application was of about 12 days, beyond the allowed 14 days. In the supporting affidavit, the reason for the delay given is that the Applicants’ counsel was bereaved. No further details are given to ascertain the dates when counsel was bereaved. In the circumstances, I find that the delay is inordinate and insufficiently explained to warrant this court exercise discretion in the Applicants’ favour.
9. The outcome is that the chamber summons dated 13/3/2023 is unmerited, it is hereby dismissed with costs to the Respondents.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 3RD DAY OF JULY, 2024.

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S.M. GITHINJI

JUDGE

In the absence of: -

1. Mr Adoli for the Applicant
2. Mr Obaga for the Respondent

They be served.

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S.M. GITHINJI

JUDGE

3/7/2024

