



**Mwaniki Gitau & Company Advocates v Njoroge (Miscellaneous Application E055 of 2018)
[2024] KEHC 12155 (KLR) (Commercial and Tax) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E055 OF 2018
FG MUGAMBI, J
OCTOBER 11, 2024**

BETWEEN

MWANIKI GITAU & COMPANY ADVOCATES APPLICANT

AND

ESTHER WAMBUI NJOROGE RESPONDENT

RULING

Introduction And Background

1. On 30/1/2024, the court delivered a ruling in this matter, in which the advocate’s preliminary objection was allowed. The objection was that the client’s application, seeking to have the ruling of the Deputy Registrar in respect of the advocate’s bill of costs reviewed and set aside, contravened Rule 11(2) of the *Advocates Remuneration Order* (“the Order”) and was time barred. The client’s application was thus struck out but she has now filed the Chamber Summons dated 9/2/2024 under Rule 11(4) of the ARO and sections 1A,1B and 3A of the *Civil Procedure Act* seeking to enlarge time within which she can file a reference.
2. Besides the grounds on the face of it, the application is further supported by the client’s supporting affidavit sworn on 9/2/2024. It is opposed by the advocate, JOSEPH MWANIKI GITAU, through his replying affidavit sworn on 4/6/2024 and Grounds of Opposition of the same date.
3. The client contends that the omission to file the reference within the prescribed period of 14 days was as a result of the ruling of the Deputy Registrar being delivered virtually and in a summary fashion. It is the client’s case that the Deputy Registrar read out the taxed amount of Kshs. 46,099/= but she did not give her reasons neither was a typed copy of the Ruling furnished to her advocates immediately upon delivery.



4. That by a letter dated 8/7/2022, the client's advocates objected to the taxation and requested for the reasons for taxation together with a typed copy of the ruling for the purpose of filing a reference. This action was taken within 14 days as prescribed by the rules. The client claims that the typed ruling was not availed to her advocates on record until 17/1/2023 and that this fact is evidenced and supported by the court receipt dated 17/1/2023 which was produced at page 12 of her application which was struck out by the court.
5. That her advocates on record thereafter filed the reference dated 30/1/2023 within 14 days from the date of receiving the typed ruling as prescribed by the Rules. The client avers that in view of the foregoing, it is evidently clear that her advocates acted with due diligence in the circumstances and it was not possible to file the reference until they received the typed ruling and the reasons for the taxation.
6. The client contends that the failure to comply with the strict timelines as decided by the court in the ruling delivered on 30/1/2024 was purely inadvertent and not caused by sheer inaction or indolence by the client or her advocate on record.
7. The client depones that it is her and not her advocate who stands to suffer prejudice if the orders sought are not granted. This is because she will be denied the right of appeal and be condemned to personally pay the taxed amount of Kshs. 46,099/= despite the fact that the alleged legal services were rendered to Gallery Watatu Limited and not to the Client in person as purported in the Advocate's Bill of Costs.
8. The client denies having retained the advocate to render any legal services to her as alleged. She contends that the court has the power and jurisdiction to enlarge the time for filing a fresh reference as sought.
9. On his part, the advocate opposes the application by stating that the same is misconceived, bad in law and meant to deny him fair justice as the legal fees for representing the client in the matter of Gallery Watatu Limited. It is the advocate's case that the client has not declared or satisfactorily explained the whole period of delay, therefore is not deserving of the extension of time. The advocate denies being served with the letter of 8/7/2022 bespeaking of the typed copies of proceedings to file the intended reference.
10. The advocate also contends that the client has not made any attempt to explain why she had to wait until they were issued with the copy of proceedings before taking any action and that a copy of ruling and typed proceedings are not required to file a reference. That the client did not indicate the items on the bill of costs that she was objecting to before expiry of the prescribed 14 days. Finally, the advocate submits that it would be a travesty of justice for the court to exercise its discretion in favour of the client and that to extend time will be tantamount to jettisoning the ruling of the 30/1/2024 since the court is *functus officio*.

Analysis and Determination

11. I have carefully considered the pleadings together with the submissions of the parties. The court is being asked to determine whether the client should be granted more time to file her reference. It is not in doubt that under Rule 11(4) of the ARO, the court has the discretion to enlarge time to file a reference as follows:

“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.”



12. I am however mindful that even in the exercise of this discretion, the whole period of delay should be declared and explained satisfactorily to the Court. This was as held by the Supreme Court, in *County Executive of Kisumu V County Government of Kisumu & 8 Others*, [2017] KESC 16 (KLR).
13. The Court reiterated the principles it had earlier delineated in *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others*, [2014] KESC 12 (KLR) that a court, in its determination of such an application is guided by the following factors:
 - 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;
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
14. I note that the client has advanced the same reasons she presented previously in her opposition to the advocate's preliminary objection, the subject of the court's ruling of 30/1/2024. In the said ruling, the court wondered why it took the client 5 months to access the reasons from the Deputy Registrar and file the reference. The client has still not answered this question and hopes to still get away with this application; that is highly unlikely in light of the unexplained and inordinate delay.
15. It should not be lost that the period of delay, however short, must go in tandem with the explanation for it (see Waki, JA, in *Gerphas Alphonse Odhiambo V Felix Adiego*, [2006] eKLR).
16. There is judicial precedent whereby courts have found such periods of delay or less to be inordinate. (See *Amondi & Company Advocates V Varma & Others*, [2022] KEELC 2834 (KLR)).

Disposition

17. Accordingly, I find no merit in the client's application dated 9/2/2024 and the same is dismissed with costs to the advocate.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 11TH DAY OF OCTOBER 2024.

F. MUGAMBI

JUDGE

