



REPUBLIC OF KENYA



KENYA LAW
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**Muchelesi v Nabukiyabi (Civil Appeal 34 of 2018)
[2023] KEHC 2348 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL 34 OF 2018
REA OUGO, J
MARCH 1, 2023**

BETWEEN

JOHN JUMA MUCHELESI APPELLANT

AND

GRACE MANG'ENI NABUKIYABI RESPONDENT

RULING

1. By a chamber summons dated December 13, 2022 the applicant seeks to be granted leave to file a reference objecting to the taxation by the Hon Deputy Registrar H. Getenga which was delivered on the December 22, 2022. That if the said leave is granted then the reference be deemed to be duly lodged with time and that pending the hearing and determination of the case stay of execution of the costs as taxed by the Hon. Deputy Registrar on the November 2, 2022 and that costs be provided for.
2. The application is supported by 7 grounds on the face of the application and the supporting affidavit of Mr. John Juma. He avers that he is desirous of being heard on appeal on the Ruling made on the July 22, 2022. That on the same day the Ruling was read he appealed for reasons for taxation. After that the court file went missing and due to misfiling at the main Registry. He will suffer irreparable damage if the execution proceeds herein.
3. The application was opposed by Grace Nangeni. The Respondent in a replying affidavit filed on the December 20, 2022 states the application is misconceived bad in law and an abuse of the due process of court. That she is aware that after the Ruling was delivered on the November 22, 2022 the applicant counsel filed a Notice of Objection and a response was offered on the February 23, 2022 and thereafter the applicant had 14 days to file and serve the response which the applicant didn't do. That there is no evidence that the court file went missing nor a letter from applicant particularizing the administrative logistics.



4. Rule 11 (27) & (4) of the *Advocates Remuneration Order* gives this court the discretion to allow an applicant extension of time to file a reference. Although the applicant has been challenged that the reasons given are inadequate it is apparent that he wishes to pursue the matter by way of a reference. He filed this application within reasonable time when he noticed that the 14 days had lapsed. No prejudice will be caused to the Respondent, as she can be compensated by way of costs .
5. I will therefore exercise my discretion and grant the application as follows;
 - i. The applicant is granted leave to file a reference objecting to the taxation by the Hon. Deputy Registrar H.Getenga on the November 22, 2022.
 - ii. The said references shall be filed and served within 14 days from the date of this Ruling.
 - iii. No execution has to be placed and therefore I will not issue a stay of execution.
6. Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 1ST DAY OF MARCH, 2023

R.E. OUGO

JUDGE

In the presence of:

Mr. Waswa For the Applicant

Respondent Absent

Wilkister C/A

