



**Tom Ojienda & Associates v Nairobi City County (Miscellaneous Application 10 of 2019) [2023] KEHC 1950 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1950 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
MISCELLANEOUS APPLICATION 10 OF 2019**

**AC MRIMA, J  
MARCH 10, 2023**

**BETWEEN**

**PROF. TOM OJIENDA & ASSOCIATES ..... RESPONDENT**

**AND**

**NAIROBI CITY COUNTY ..... APPLICANT**

**RULING**

1. This ruling is in respect of an application by way of a Notice of Motion dated May 7, 2021. The application was filed by the client/applicant.
2. The application seeks the following orders: -
  - a. spent
  - b. This honourable court be pleased to review and or vary its Orders delivered in February 25, 2021 and enlarge time within which to file fresh reference by the client/applicant.
  - c. That costs be in the cause
3. It is supported by the affidavit sworn by one David Mukii Mereka, the applicant’s Counsel on record. There are 4 reasons in support of the application which appear on the body of the said application. They are as follows: -
  - a. That on February 25, 2021, this honourable court delivered its ruling with respect to an Application by the applicant dated October 3, 2019 and which ruling was delivered ex-parte as the applicant was unable to access virtual court due to technological hitches.
  - b. That the orders issued on February 25, 2021 have since lapsed and it is in the interest of justice that this honourable court review and or varies its orders enlarging time within which to file a fresh reference.



- c. That no prejudice will be suffered by the respondent by the proposed review.
  - d. That unless the Orders sought are granted, the applicant will suffer irreparably and it is in the interest of justice and fairness that the orders sought are granted.
4. The applicant filed written submissions in further support of the application.
  5. The respondent opposed the application. They filed written submissions to that end.
  6. This court has keenly considered the application alongside the submissions. The application seeks the discretion of the court in extending the time within which to file a reference against the taxation by the Hon. Taxing Master.
  7. There is no doubt this court (Hon. Makau, J.) allowed the applicant's Chamber Summons dated October 3, 2019 to the extent that the applicant was to file a fresh reference against the ruling of the Taxing Master within 14 days of the ruling.
  8. The applicant cited difficulties in accessing the court's virtual system and his inability to get a copy of the ruling since court operations had been scaled down due to the Corona virus pandemic. The applicant laid its hands on the ruling on April 30, 2021 through Kenyalaw website and by then the time allowed to file a fresh reference had lapsed, hence the instant application which is subject of this ruling.
  9. This court has gone through the parties' submissions which highlighted the legal principles guiding the exercise of discretion on the part of the court. The principles are well settled.
  10. Considering the reasons fronted by the applicant and the objection by the respondent, this court is of the considered position that the reasons the reasons by the applicant are plausible. It is true court's operations had been scaled down in February 2021 and court access was very limited.
  11. The applicant was also not indolent. Counsel for the applicant readily wrote to the Counsel for the respondent on the day the ruling had been scheduled for delivery and explained his predicament. He requested to be favoured with what had transpired in court, but nothing was forthcoming. Subsequent like requests were likewise not responded to.
  12. When the applicant eventually found the ruling reported in Kenyalaw website, it readily filed the application for extension of time.
  13. As this court had earlier on deemed it fit to accord the applicant an opportunity to challenge the ruling of the Taxing Master, but for the lapse captured above, it is only fair that the Applicant be allowed to pursue the intention. However, the Applicant shall bear the costs of the application.
  14. Having so found and held, the following orders hereby issue: -
    - a. The time within which the applicant was allowed to file a fresh reference vide the ruling delivered on February 25, 2021 is hereby extended for a further 21 days of this ruling.
    - b. The applicant shall shoulder the costs of the application which is assessed at Kshs. 30,000/= (Read: Kenya Shillings Thirty Thousand Only). The sum be paid within 30 days of this ruling failure to which execution to issue.

Orders accordingly.

**DELIVERED, DATED and SIGNED at KITALE this 10<sup>th</sup> day of March, 2023.**

**A. C. MRIMA**

**JUDGE**



Ruling virtually delivered in the presence of:

Mr. Njoroge, Counsel for the Applicant/Client.

Mr. Ochieng, Counsel for the Advocate/Respondent.

Regina/Chemutai – Court Assistants.

