



**Wanderi & 54 others v Masinde Muliro University of Science and Technology
& others & 4 others (Petition E149 & E207 of 2011 (Consolidated))
[2023] KEHC 20347 (KLR) (Constitutional and Human Rights) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E149 & E207 OF 2011 (CONSOLIDATED)**

M THANDE, J

JULY 21, 2023

BETWEEN

**MARTIN WANDERI 1ST APPLICANT
JOEL SUTER 2ND APPLICANT
MARK KAMAU 3RD APPLICANT
MICHAEL OUTA 4TH APPLICANT
SAMUEL MUKABI 5TH APPLICANT
MAUREEN AKINYI 6TH APPLICANT
JOHN MWENDA 7TH APPLICANT
FRED WEKESA 8TH APPLICANT
DAVID OWINO 9TH APPLICANT
MERCY WANGALIA 10TH APPLICANT
DENIS OSEWE 11TH APPLICANT
BRIAN MABATUK & OTHERS 12TH APPLICANT**

AND

**MASINDE MULIRO UNIVERSITY OF SCIENCE AND TECHNOLOGY &
OTHERS RESPONDENT**

AS CONSOLIDATED WITH

PETITION E207 OF 2011



BETWEEN

JESSE WAWERU WAHOME 1ST PETITIONER
GEOFFREY NGILLAH MAKANGA 2ND PETITIONER
MAURICE OTIENO OLOO & 40 OTHERS 3RD PETITIONER

AND

KENYA ENGINEERS REGISTRATION BOARD 1ST RESPONDENT
EGERTON UNIVERSITY 2ND RESPONDENT
**MINISTRY OF HIGHER EDUCATION SCIENCE AND
TECHNOLOGY 3RD RESPONDENT**
COMMISSION FOR HIGHER EDUCATION 4TH RESPONDENT

RULING

1. Before this Court for determination, is an Application dated April 29, 2023 seeking the following orders:
 1. That the Honorable Court be pleased to extend the time allowed for the (i) issuing Notice of objection of taxation and (ii) Lodging and service of the Reference and Chambers Summons.
 2. That the filed and served Notice of Objection of taxation and of Reference be deemed to have been filed and served on time.
 3. That any other or further orders in the interest of justice, do issue.
 4. That the costs of and incidental to this Application abide the results of the said Reference.

2. The Applicants plead That this Court extends the time limited for lodging and service of the Notice of Objection of Taxation and Reference and Chamber Summons challenging the Taxation Ruling delivered by Hon Njeri Thuku on April 23, 2021 for the Party and Party bills dated April 30, 2020 and July 20, 2020 consolidated, and taxed together then sent via email, in respect of Petition No 149 of 2011 consolidated with 207 of 2011. The reason for the delay in lodging and serving Notice of Objection and Reference, they say, is That at the time the ruling was delivered some members of staff in M/s Katwa and Kemboy Advocates were afflicted by Covid-19 and it became necessary to suspend office activities with effect from March 24, 2021 when the first case of Covid-19 in the office was established. In line with the measures prescribed by the Ministry of Health, the operations in the office were suspended for the health, safety and welfare of the office staff. This suspension combined with the Easter period resulted in closure of the office until April 12, 2021. The Applicants asserted That the motion for this reference was commenced immediately upon resumption of work. They further stated That except for the Covid-19 related delay, there has not been any inordinate delay in making the reference and issuing the correlated notice.



3. The Applicants further stated That they are aggrieved and minded to advance the reference appeal, hence this prayer for admission of reference out of time. The bill of costs dated April 30, 2020 was for Kshs 34,722,670.88 but was taxed at Kshs 582,530.00. The bill of costs dated July 20, 2020 was for Kshs 13,735,443.00 but was taxed at Kshs 782,247.00. The grounds for challenging the taxation are That:
 - a. The learned Taxing Master grossly and unfairly undervalued the work, effort and enterprise put into the cases. In the cases about 11 Judges at the 3 levels namely, High Court, Court of Appeal and Supreme Court all arrived at different findings at each of the 3 levels of trials.
 - b. The learned Taxing Master taxed off the amount in the bills at less than 1% for especially the instructions and getting up fees without assigning reasons for the drastic action.
 - c. The learned Taxing Master failed to consider That the in taxation done at Supreme Court, the bill was taxed at Kshs 5,075,190.00 in sum, with instructions fees taxed at Kshs 5,075,190.00 owing to the obtaining complexity.
4. The Applicants further stated That the reason for delay are substantial and That the delay has not been inordinate or unreasonable. They further stated That no prejudice or damage will be suffered by the Respondent if time is extended. Additionally, That at the time of this motion, the contested taxed sum of Kshs 582,530.00 and Kshs 782,247.00 remains unpaid.
5. They urged the Court to exercise its discretion to extend time for lodging the reference and to deem the filed as duly filed and served as prayed, with any other reasonable orders and or directions the Court may deem necessary to issue.
6. The Application is opposed by the Respondent by means of grounds of objection dated April 29, 2022. The grounds are That the Application is fatally defective as it was filed out of time without leave of the Court; That the ruling of the taxing master dated March 23, 2021 is fair and reasonable; That there are no grounds to disturb the taxation ruling; That the Application is without merit for want of sufficient reason to grant the orders sought.
6. The jurisdiction of this Court to enlarge the time for filing an objection to a taxation is stipulated in Paragraph 11 of the [Advocates Remuneration Order](#) which provides for objections as follows:
 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 subsection (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) far 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. The Court has the discretion to enlarge the time fixed for objecting to the decision of the taxing officer. An application for enlargement of time may be made by chamber summons. 3 clear days' notice in writing of such application must be given to every interested party. The law provides That enlargement may be allowed even where the application for the same is not made until after the expiration of the time fixed.
6. In the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi Civil Application No NAI 255 of 1997* (unreported) the Court of Appeal dealt with an application for extension of time within which to file and serve a notice of appeal and record of appeal, and stated as follows:

'It is now well settled That the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled That in general, the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay. Secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and, fourthly, the degree of prejudice to the respondent if the application is granted.'

6. The guiding principles as set out by the Court of Appeal are first, the length of delay, second, the reason for delay, third, the probability of success of the appeal, and forth, the degree of prejudice to be suffered, by the respondent if the extension is granted. Although these principles relate to extension of time to file a notice of appeal and a memorandum of appeal, they can by parity of reasoning, apply to extension of time for filing an objection to a taxation and reference.
6. In the present case, the ruling on taxation was delivered on March 23, 2021. The notice of objection ought to have been filed by April 6, 2021. The Application was filed on April 29, 2021 a period of 23 days after the time allowed. In the premises, it cannot be said That there was inordinate delay.
6. Further, the reason proffered by the Applicants for the delay, is That members of the Applicants' law firm contracted Covid-19, leading to the suspension of office activities with effect from March 24, 2021 up to April 12, 2021. This was in line with the Ministry of Health measures to contain Covid-19. The Court takes judicial notice of the fact That in 2021 the Covid -19 pandemic was still at its peak. Stringent preventive measures were put in place by the Ministry of Health which included inter alia closing offices where an infection was detected. The reason is therefore satisfactory to the Court.
6. As regards the prejudice to be suffered by the Respondent if the Application were to be granted, none was cited to the Court. Indeed, all the Respondent said was That the Application is fatally defective for being filed out of time without leave and That it is unmerited as there is no sufficient reason to grant the orders sought. This with respect, does not demonstrate That any prejudice will be suffered by the Respondent should the orders sought be granted.
6. It is noted That the Respondent has submitted on the question whether the ruling of the Taxing Master is fair and reasonable or whether there are grounds to disturb the same. That is a matter to be considered at the hearing of the Reference and not at this stage. The Respondents submissions in this regard are thus premature.
6. I have considered the case of *Abmednassir, Abdikadir & Co Advocates v National Bank of Kenya Ltd [2007] eKLR* relied on by the Respondent. Ochieng, J (as he then was) dealt with a reference where preliminary objection was raised anchored on the fact That the applicant therein had not filed an



affidavit in support of the reference. With respect, this authority is not relevant to the case before this Court.

6. On costs, the proviso to Rule 6 provides That the costs of an application such as the present one, shall be borne by the party making the application.
6. In the end, I find the Application is merited and I make the following orders:
 - i. The time for issuing Notice of Objection of Taxation and lodging and service of the Reference and Chambers Summons is hereby enlarged.
 - ii. The filed and served Notice of Objection of Taxation and of Reference are hereby deemed to have been filed and served on time.
 - iii. The Respondent shall file a response by August 4, 2023.
 - iv. Mention on September 28, 2023 for further directions.
 - v. The Applicants shall bear the costs of this Application.

DATED AND DELIVERED IN NAIROBI THIS 21ST DAY OF JULY 2023

M. THANDE

JUDGE

In the presence of: -

..... for the Applicants

..... for the Respondent

.....Court Assistant

