



Singh Gitau Advocates v Kenindia Assurance Company Limited (Miscellaneous Application E783 of 2021) [2024] KEHC 14515 (KLR) (Commercial and Tax) (19 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14515 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E783 OF 2021**

**PM MULWA, J
NOVEMBER 19, 2024**

BETWEEN

SINGH GITAU ADVOCATES ADVOCATE

AND

KENINDIA ASSURANCE COMPANY LIMITED CLIENT

RULING

1. Pursuant to paragraph 11 of the Advocates Remuneration Order, the client filed a Chamber Summons application dated 28th October 2022 seeking the following orders:
 1. Spent
 2. Spent
 3. That the court be pleased to extend the period/time for filing a reference and consider that the present reference is properly filed.
 4. That this Honourable Court be pleased to set aside and/or vacate the decision of the taxing officer delivered on 12th April 2022 in relation to the Advocate-Client Bill of Costs dated 15th October 2021 in entirety and revert back the bill for taxation a fresh before a different DR or be taxed by this Honourable Court.
 5. That upon setting aside and/or vacating the decision of the taxing officer delivered on 12th April 2022 in relation to the Advocate-Client Bill of Costs dated 15th October 2021, the Honourable Court be pleased to issue an order dismissing the Advocate-Client Bill of Costs dated 15th October 2021.
 6. That the costs of this application be provided for.”



2. The grounds of the application were that the advocate herein filed an advocate-client bill of costs dated 15th October 2021 against the client and the Honourable E.M. Nyakundi taxed the same at Kshs. 326,102.00.
3. The client/applicant contended that the delay in filing the reference was due to the leaving from the firm of the person who was handling the file and that this reference raises important issues for consideration by this court.
4. The client averred that the taxing officer taxed the advocate-client bill of costs at Kshs. 326,102.00 notwithstanding that the advocate did not avail a copy of the judgment, instruction letter or an issuance of a final fee note.
5. That the award for instruction fee should not exceed Kshs. 10,000.00 but the taxing master awarded Kshs.100,000.00; that there is no evidence of court attendance and there is no provision for costs for service of letters.
6. The client's case was that the taxing officer taxed the bill of costs at Kshs. 326,102.00 notwithstanding that the client did not demonstrate that it was due and that the advocate had indicated elsewhere that the judgment was for Kshs.238,570.00 for which instruction fee was Kshs.42,000.00 and not Kshs.100,000.00 awarded.
7. The client argued that the taxing officer acted on the wrong principles and disregarded pertinent factors she ought to have considered.
8. The advocate opposed the application through a replying affidavit sworn on 6th April 2023 by Aaron James Kinyanjui, the advocate's counsel. He averred that the instructions were duly given by the client to the advocate and that negates the client's assertion that the advocate lacked instructions to represent the client. That the client failed to settle the advocate's costs leading to the advocate filing its bill of costs dated 15th October 2021.
9. That the client is challenging the taxing master's decision when they had an opportunity to defend the bill of costs which opportunity they did not seize during the taxation proceedings; that the client filed this application over 8 months after delivery of the ruling.
10. The advocate asserted that the instant application is devoid of merit, an abuse of the court process and means to frustrate the advocate in recovering his fees.

Analysis and determination

11. The client filed written submissions dated 28th February 2024 while the advocate filed submissions dated 4th July 2024.
12. Having analysed the pleadings and submissions filed in this matter, I will first deal with the issue of whether the client has demonstrated sufficient cause for leave to file the instant reference out of time.
13. Clause 11 of the *Advocates Remuneration Order* states:
 - “(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) ...

(4) 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.”

14. In this case, the taxing master's ruling and reasons for taxation decision was delivered on 12th April 2022. The instant application seeking leave to extend the time for filing a reference and the reference itself was filed on 28th October 2022. Under the *Advocates Remuneration Order*, a reference ought to be filed within 14 days from the date of receiving the reasons for the taxation.

15. The proceedings on record indicate that counsel for the client was present when the ruling was delivered and a copy of the ruling was sent to counsel on record for the client vide a letter dated 21st April 2022 which was stamped as received by the client's advocate on 22nd April 2022. The letter is produced as an annexure marked 'AJK-5' in the advocate's replying affidavit.

16. In the Supreme Court case of *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] KESC 16 (KLR), the court held:

“It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. 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;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

17. The extension of time is an equitable remedy only granted to a deserving party at the court's discretion and the party seeking it has the burden of giving satisfactory reasons for the delay.



18. In the instant case, the client's main reason for the delay in filing the reference was that the advocate who had conduct of this matter left the law firm which represented it.
19. The record indicates that the client was represented by counsel when the taxing master made her taxation ruling and further that the client's law firm was served with the said ruling. This is proof that the client's advocates were aware of the ruling but remained indolent until after 7 months when they filed the present application.
20. I find that the client's allegation that the delay was caused by its advocate leaving the firm is unsubstantiated. Extension of time is an equitable relief and in this case I find that the delay in filing this reference was inordinate and there is no sufficient explanation for it.
21. For this reason, I dismiss the application dated 28th October 2022 with costs to the Advocate/ Respondent which I assess at Kshs. 20,000.00.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF NOVEMBER 2024.

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P. MULWA

JUDGE

In the presence of:

Mr. Chemwoiywo for advocate/respondent

Ms. Gathara for client/applicant

Court Assistant: Carlos

