



**Meyer v Kairu (Commercial Case 814 of 2021)
[2024] KEHC 15749 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL CASE 814 OF 2021
A MABEYA, J
DECEMBER 6, 2024**

BETWEEN

CHRISTIAN MEYER PLAINTIFF

AND

HARRISSON KARANJA KAIRU DEFENDANT

RULING

1. Before Court is the Chamber Summons by the plaintiff brought under Paragraph 11(1) and 11(4) of the *Advocates remuneration order* 2014, section 1A, 1B and 3A of the *Civil Procedure Act*. It seeks an extension of time within which to file a notice of objection against the decision of the taxing master on the respondent's bill of costs dated 23/6/2023 and taxed on 7/2/2024. It also seeks that the notice of objection dated 29/2/2024 be deemed as duly filed.
2. The application was premised on the grounds set out on the face of the Summons and the supporting affidavit of CYNTHIA OMUTA sworn on 4/3/2024. It was contended that the respondents bill of costs dated 23/6/2023 was taxed on 7/2/2024 at Kshs 1,686,032.93.
3. That the applicant's advocate only got a copy of the ruling on 26/2/2024 and thereafter sought from the client whether there was need to file a notice of objection. That the advocate got hold of the client on 29/2/2024 and was given instructions to object to the taxation. That the notice of objection was drafted albeit 10 days late.
4. It was contended that failure to file the notice of objection on time was not intentional but an oversight on the part of the applicant's advocate. That the application was brought without undue delay and it would be in the interest of justice to allow the same.
5. The application was opposed vide a replying affidavit dated 12/3/2024. It was contended that the applicant had come to court with unclean hands since the averment that the applicant got a copy of the ruling on 26/2/2024 was false. According to the respondent, the applicant through their known



mobile number and email, they were served on 7/2/2024. Additionally, the judiciary through the SMS service sent a notification of the ruling. That the deadline of filing the notice expired on 21/2/2024 and the applicant failed to give a credible reason for the delay.

6. The application was canvassed by way of written submissions which I have considered. The applicant submitted that the bill of costs was taxed on 7/2/2024 therefore the time for filing a notice of objection lapsed on 21/2/2024. That a notice of objection was drafted on 29/2/2024 after an 8day delay. That the ruling was obtained by the applicant on 29/2/2024.
7. Counsel submitted that there was an oversight on the part of the advocate with respect to timelines but the reasons aforementioned sufficiently explained the delay in filing the notice of objection. That the applicant would stand to suffer more prejudice and in public interest litigants should not be locked out because of procedural impropriety.
8. The respondent submitted that the applicant had not satisfactorily explained the delay in filing the notice of objection. That the applicant had access to the ruling via the e filing portal, email and sms notification. That the applicant did not state the prejudice she stands to suffer
9. I have considered the averments by both parties in their respective pleadings and submissions. The main issue for determination is whether time for filing the notice of objection against the decision of the taxing master should be enlarged.
10. Paragraph 11 of the [Advocates Remuneration Order](#) (ARO) stipulates as follows on the filing of reference objecting to the decision of the Taxing Master: -

- “ 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 which he objects.
- 2) The Taxing Officer shall forthwith record and forward to the objector the reasons or 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 subparagraph (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) 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 expired.”

11. This is an application for extension of time. In [Nicholas Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission & 7 Others](#) [2014] eKLR, the Supreme Court set out the principles that are to guide a court in the exercise of its discretion to extend time as follows: -

“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;
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
12. In the present case, the applicant’s reasons for failing to meet the requirements of the above provision are that the bill of costs was taxed on 7/2/2024 and the applicant only got hold of the ruling on 26/2/2024. That it took three more days for the advocate to reach the client in order to be instructed as to whether the ruling ought to be challenged. It was the applicant’s contention that a delay of 8 days was not inordinate.
13. On his part, the respondent observed that the applicant’s reasons did not sufficiently explain the delay. According to the respondent, the ruling was uploaded immediately after delivery on the e-filing platform and the parties were further given notice via SMS.
14. I have carefully considered the parties averments. It is evident that the ruling of the taxing master was delivered on 7/2/2024, meaning the notice of objection should have been filed by 21/2/2024, in accordance with the applicable timelines. However, the applicant filed this application on 4/3/2024, resulting in a delay of 12 days.
15. Although the reasons provided for the delay are not compelling or sufficiently detailed, the Court finds that the delay is not inordinate. Importantly, no prejudice will be occasioned to the respondent by granting the request for an extension of time. The prejudice will be only a delay which can be atoned by an order for costs. On the other hand, the applicant may be highly prejudiced if she was denied an opportunity to be heard on a reference.
16. In exercising its discretion, the Court is guided by the principles of fairness and justice as enshrined in Article 50 of the Constitution, which guarantees the right to a fair hearing. The Court must ensure that parties have a reasonable opportunity to pursue their claims, provided that there is no prejudice to the other party.
17. In light of the foregoing, I find that this is a proper case in which to exercise the court’s discretion to enlarge the time within which the applicant may file the notice of objection.
18. Accordingly, I grant the application as prayed. The reference be filed within 14 days. The applicant shall bear the costs of the application assessed at Kshs.15,000/-.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER, 2024.



**A. MABEYA, FCI ARB
JUDGE**

