



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
MISC. APPLICATION NO. 61 OF 2019
IN THE MATTER OF ADVOCATES (REMUNERATION ORDER)
AND
IN THE MATTER OF TAXATION BETWEEN ADVOCATES AND CLIENT
P.K. MUREITHI & CO. ADVOCATES.....APPLICANT
AND
ELIZABETH WANJRI NGUGI.....RESPONDENT

(Arising from Succession Cause No 1830 of 1999 In the Matter of the Estate of John Ngugi Kimani (Deceased))

RULING

1. This ruling is in respect of chamber application dated 7th August 2020 whose prayers are as follows:

- “1) To dispense with the requirement to file a Notice to obtain reasons for taxing officer’s decision and the enlargement of time to apply for the same;**
- 2) To allow the applicant to file a notice of objection out of time under the provisions of paragraph 11 rule 1 and 4 of the Advocates Remuneration Order;**
- 3) Should prayers 1 and 2 above be granted, this reference be deemed as a properly filed and the same be set down for hearing;**
- 4) In the alternative this Honourable Court be pleased to enlarge the time within which to file a reference against the decision of the taxing officer delivered on 28th February 2020;**
- 5) The ruling and costs allowed by taxing officer, the Deputy Registrar of the High Court of Kenya, Hon. Mukabi Kimani on 28th February 2020 be set aside and reviewed and/or revised in its entirety;**
- 6) The applicant’s bill of costs dated 14th March 2019 be taxed a fresh more specifically in respect to item No. 1, 2, 53, 62, 63, 126 and 146 of the bill of costs; and**
- 7) Costs to be in the cause.”**

2. The background is that on 28th February 2020 the Taxing Officer Hon. Mukabi Kimani delivered a ruling in which he taxed the Advocate-Client Bill of Costs filed on 24th April 2019 presented by P.K. Mureithi & Co. Advocates (the applicant) against his former client Elizabeth Wanjeri Ngugi (the respondent). The Bill sought Kshs.81,742,756/50, Ksh.60,075,000/= being instructions fees. The instructions related to **High Court Succession Cause No. 1830 of 1999** in respect of the estate of John Ngugi Kimani (the deceased). The respondent was a co-administrator and 3rd wife of the deceased.

3. The Taxing Officer taxed the Bill at Kshs.985,747/80, Kshs.750,000/= being instructions fees. The main complaint by the applicant was that the instructions fees was too low given the value of the subject matter which he said was Kshs. 4 billion.
4. The applicant stated that the ruling was deferred severally, after initially being indicated to be at 2.30 pm on 28th February 2020 when they were informed that it was not ready. Consequently, they followed up the issue of the ruling but the file could not be traced. It was not until 17th July 2020 that the file was traced and they came to learn that infact the ruling had been delivered on 28th February 2020. By this time, the time for the filing of the reference to challenge the taxation had passed. They found the ruling contained reasons, and therefore it was not necessary to file a notice of objection and to request for reasons. The application therefore essentially seeks enlargement of time to file a reference against that taxation.
5. When the succession cause was filed the value of the estate was indicated to be Kshs.11,200,000/=. That was the value that the Taxing Officer used to tax instructions fees. The applicant states that the Taxing Officer did not consider that the estate value when filing the petition was an estimated one; that the estate comprised several properties and prime land within Nairobi and its environs. It was pointed out, for comparison, that the firm of Njiri Kanyiri & Thuku Advocates had been awarded Kshs.13,863,538/= in a taxation (**Misc. Cause No. 364 of 2009**) in the same estate in respect of other beneficiaries. The Taxing Officer in that taxation had valued the estate at Kshs.150,000,000/= in 2003. If the reference is allowed to be filed, the applicant will be arguing that the Taxing Officer misapprehended and/or failed to appreciate the principles applicable in taxation between an advocate and a client.
6. The replying affidavit was by Daniel Wokabi Mathenge who swore that no justifiable case had been made to warrant enlargement of time to file a reference. Counsel agreed that the ruling was deferred until its delivery on 28th February 2020. After that no steps were taken by the applicant to pursue the matter. He swore that there was no evidence of contacting the registry or writing to it over the file. Counsel deponed that the reference to **Misc. Cause No. 364 of 2009** was not of help as the discretion in either case was exercised differently.
7. Both sides agree that the Taxing Officer deferred the ruling on taxation. The applicant states that this was done severally. The respondent does not say how many times the deferment was done. It was also not clear when the hearing of the taxation was done, and when it was indicated the ruling would be. Further, it was not clear whether, after the ruling was ready, a notice of its reading was given to the parties. The respondent does not say how he came to know that the ruling would be on 28th February 2020. The applicant may not have filed a formal letter to the registry inquiring about the file, but the facts of the case are such that life was not made easy for them to access the file and ruling to make a decision whether or not to file a reference.
8. Under paragraph 11 rule 4 of the Advocates Remuneration Order this court has the discretion to enlarge time to file a reference. The time allowed for filing a reference is 14 days from the time reasons for the taxation have been given by the Taxing Officer. Of course, any extension of time is not a right to a party (**Nicholas Kiptoo Arap Korir Salat – v- IEBC & 7 Others [2014] eKLR**). It is an equitable remedy available only to a deserving party. Any delay should be explained. There have to be valid and clear reasons on which the court would exercise its discretion to extend the time allowed by the law (**Stanley Kahoro Mwangi & 2 Others – v – Kanyamwi Trading Limited [2015]eKLR**).
9. On the reasons given by the applicant, I will exercise my discretion and extend time by 7 days to enable them to file and serve a reference to challenge the decision of the Taxing Officer.
10. The applicant has been indulged. They will pay costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF NOVEMBER 2021.

A.O. MUCHELULE

JUDGE