



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**MISCL. APPLICATION NO. 270 OF 2016**

**M/S KIPSANG' & CO. ADVOCATES.....RESPONDENT**

**VERSUS**

**CHEBARA FARMERS CO. LTD.....APPLICANT**

**AND**

**IN THE MATTER OF ADVOCATES (REMUNERATION-AMENDMENT) ORDER 2010**

**AND**

**IN THE MATTER OF ADVOCATE/ CLIENT COSTS RELATING TO NAKURU HCC NO. 119 OF 2001**

**BETWEEN**

**CHEBARA FARMERS CO. LTD.....DEFENDANT /APPLICANT**

**VERSUS**

**KIROBON FARMERS CO. LTD.....DEFENDANT/APPLICANT**

**AND**

**HOSEA B. CHEMWENO.....INTERESTED PARTY**

**RULING**

1. An Advocate-client Bill of costs in **Nakuru HCCC No.119 of 2001** dated 26<sup>th</sup> July 2016 and filed on even date, in the sum of Kshs.15,604,046/75 was on the 15<sup>th</sup> June 2016 taxed at Kshs.516,668/=.

The advocates M/S Kipsang and Company Advocates by its application dated 18<sup>th</sup> April 2019 urged the court to stay the execution of the decree following the taxation, and review the same to enable it settle valid and lawful dues to the client.

By a ruling dated 26<sup>th</sup> September 2019, this court found no merit in the application and dismissed it as no objection or reference were filed against the taxation.

**2. By an application dated 4<sup>th</sup> October 2019 and subject of this ruling**, the applicant Kirobon Farmers Co. Ltd the defendant in HCCC NO. 119 of 2001 seeks for orders that

(1) - spent

(2) That the Honourable court be pleased to stay the execution of the decree and certificate of costs taxed exparte on the 4<sup>th</sup> July 2018.

(3) That the Honourable court be pleased to set aside the decree dated 4<sup>th</sup> July 2018, and extend time and grant leave to the applicant to file objection to the respondents bill of costs dated 26<sup>th</sup> July 2016 and taxed ex-parte on the, 4<sup>th</sup> July 2018.

3. **On the grounds** that the costs are grossly exaggerated, extortionist and punitive, and therefore seeks a review to facilitate just and final determination of the matter, and further that the time set for filing of objections has lapsed hence seek enlargement to file the same.

4. In response, the respondents filed a Replying Affidavit sworn by Langat Advocate, instructed by M/S L.R. Kipsang and company advocates.

Its disposition is that the applicant has failed to pay the taxed costs of Kshs.516,668/= and has no sufficient reasons to urge the court to grant the orders sought.

5. I have considered the application and the replying affidavit.

In the first instance similar application seeking orders of stay of execution of the decree on costs was filed, and dismissed on the 26<sup>th</sup> September 2019. This was dated the 18<sup>th</sup> April 2019.

To revisit such application would be unlawful, and *Res judicata* pursuant to **Section 7 of the Civil Procedure Act**.

6. The court has not been told nor is it aware of existence of an appeal against the ruling dated 26<sup>th</sup> September 2019 which dismissed the application which sought a stay of execution and review of the taxed bill of costs. In the circumstances, the said prayers are dismissed as incompetent and bad in law, as well as abuse of the court process.

7. Extension and enlargement of time to file a reference/objection to a taxation is provided under **Rule 11(4) of the Advocates Remuneration Order**. It provides

*The High court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) of subparagraph (2) for the taking of any step, notwithstanding that the time sought to be enlarged may have already expired.*

Fourteen days is the statutory period for filing any objections to a taxation. At time of filing this application, there was a delay of one year, three months.

8. Rule 11(4) Advocates Remuneration order grants the court power and discretion to extend the time. A party who seeks for extension of time has the burden to lay a basis to the satisfaction of the court as to the cause of the delay.

The court ought to consider whether there will be prejudice to the respondent if such order is granted.

I have perused the Affidavit in support of the applicant. No explanation for the delay of over one year has been offered.

In my view, such delay, without any explanation is unreasonable, and without any explanation or probable cause, the respondent would no doubt be prejudiced by an order of extension – see Nicholas **Kiptoo Arap Korir Salat –vs- IEBC & 7 Others (2014) e KLR**, and **Ataka, Kimori & Okoth Advocates –vs- Josephine Mwango John (2019) e KLR**.

9. The power granted to the court to enlarge time is intended to advance substitute justice, but should not be to advance negligence or inaction on the part of the applicant. A good cause, implying presence of legal and adequate reasons to answer to the purpose intended ought to be advanced to persuade the court to exercise its discretion in its favour - see **Republic –vs- Kenyatta University and Another ex-parte Wellington Kihato Wamburu (20018) e KLR**.

10. For the above reasons, I am not persuaded to extend and/or enlarge the time for filing the objections/reference against the taxing officers taxation ruling dated the 4<sup>th</sup> July 2018.

The application is therefore dismissed with costs to the Respondent/plaintiff.

**Delivered, signed and dated at Nakuru this 6<sup>th</sup> Day of January 2020.**

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**J. N. MULWA**

**JUDGE**