



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL CASE NO. 343 OF 2012**

**JACKSON KAROKI GICHUHI .....PLAINTIFF**

**VERSUS**

**LUCY SOMPET MURERO.....1<sup>ST</sup> DEFENDANT**

**VISHURA DEVELOPERS LTD.....2<sup>ND</sup> DEFENDANT**

**DR. HASMUKH DAWDA.....3<sup>RD</sup> DEFENDANT**

**IMRAN DHANJI .....4<sup>TH</sup> DEFENDANT**

**JOAKIM KIARIE KAMERE .....5<sup>TH</sup> DEFENDANT**

**RULING**

1. There are two applications under consideration in this Ruling. One is dated **3<sup>rd</sup> March 2020** and is filed by the 5<sup>th</sup> defendant. The second is filed by the plaintiff and is dated **4<sup>th</sup> March 2020**.

2. **JACKSON KAROKI GICHUHI**, the plaintiff, filed the chamber summons dated **4<sup>th</sup> March 2020** seeking leave to file a reference against the taxation of the 5<sup>th</sup> defendant's bill of costs.

3. Judgment in this matter was delivered on 8<sup>th</sup> May 2019. By that judgment the plaintiff's case was dismissed with costs to all the defendants. The 5<sup>th</sup> defendant filed his bill of costs which was taxed on 21<sup>st</sup> November 2019 at Ksh.658,923. Under paragraph 11 of the Advocates (Remuneration) Order, specifically paragraph 11(1), the plaintiff was required to file his objection to that taxation within 14 days of taxation, before the taxing master. On the taxing master giving reasons for the taxation he was required to file his reference with 14 day, see paragraph 11(2) of that Order.

4. The plaintiff did not abide by any of those timelines. By his present application the plaintiff deposed that his failure to object to the taxation was due his advocate sending to him a copy of the Ruling of the taxation through the wrong email address. That therefore he was late to give his advocate instruction to object to the taxation.

5. The court does have the discretion to enlarge the time for filing a reference as provided under paragraph 11 (4), which provides:

***“(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.”***

6. In the case **Sound Entertainment Limited v Anthony Burungu & Co Advocates [2014] eKLR** the court considered paragraph 11(4) and had this to say:

***“It is trite law that this court has jurisdiction and power to grant leave to appeal out of time on good and reasonable cause for delay to file appeal in time being shown. It is a discretion which is wide but which like any other discretion of court, must be exercised reasonably and not whimsically. It is, therefore a burden of the applicant to show or demonstrate those good grounds to persuade the court to exercise the discretion in applicant’s favour. The court will take into account (sic) are the length of delay, the reason for delay and the chances of success of the intended appeal.”***

7. Bearing the above decision in mind, the reason the plaintiff gave for not filing his reference within the time, provided under paragraph 11, is because his advocate informed him of the taxation through the wrong email. The email sent to the wrong address was attached to the plaintiff's affidavit. The length and the reason for the delay, in my view, is adequately explained. Does the plaintiff then show, on a prima facie basis, that he has a chance to succeed in his defence. The plaintiff stated, without qualifying that he intends to object to all items of the bill of costs.

8. I am of the view that it is not enough to make a blanket statement that he intends to object to all the items in the bill of costs. There needed

to be more said why all the items are the subject of the proposed objection. The plaintiff by his affidavit dated 7<sup>th</sup> February 2020 had this to say about the taxation:

*“THAT I wish to object to the amount at which the bill of cost dated 10<sup>th</sup> June 2019 was (sic) taxed at, which I have found to be inordinately high.*

*THAT I also wish to find out the reason for taxing the applicant (that is the 5<sup>th</sup> defendant) bill of costs at Ksh.658.023.”*

9. The plaintiff does not state why he thinks the bill of costs was taxed inordinately high, in other word how the taxation was contrary to the Advocates (Remuneration) Order. Further the plaintiff cannot be permitted to file a reference just so that he can be given the reason why the bill of costs was taxed as it was. If he desires to know why the bill of costs was taxed as it was, the plaintiff need only refer to the Remuneration Order.

10. There is no basis presented by the plaintiff why this court should exercise its discretion in his favour to file his reference out of time. I am inclined to agree with the sentiments of the 5<sup>th</sup> defendant that the plaintiff, by his application, seeks to frustrate the hearing of the 5<sup>th</sup> defendant’s application for entering of judgment for the taxed amount.

11. The Notice of Motion dated 3<sup>rd</sup> March 2020 is filed by the 5<sup>th</sup> defendant. The 5<sup>th</sup> defendant seeks by that application that the certificate of taxation issued on 27<sup>th</sup> January 2020 be adopted as an order of this court. That application is filed under the provisions of section 51(2) of the Advocate’s Act.

12. Under section 51(2) the court has power to enter judgment for amount taxed. There is no basis for denying the 5<sup>th</sup> defendant his prayer for judgment and the court will accede to the prayer.

13. Accordingly, the orders of the court are that:

(i) **The Chamber summons dated 4<sup>th</sup> March 2020 is dismissed with costs,**

(ii) **The Notice of Motion dated 3<sup>rd</sup> March 2020 is allowed as prayed and therefore judgment is hereby entered for the 5<sup>th</sup> defendant against the plaintiff for Ksh658,923 with interest at court rate from 21<sup>st</sup> November 2019. The defendant is awarded costs of the Notice of Motion dated 3<sup>rd</sup> March 2020.**

**DATED, SIGNED and DELIVERED at NAIROBI this 6<sup>th</sup> day of MAY, 2020.**

**MARY KASANGO**

**JUDGE**

**ORDER**

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17<sup>th</sup> April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **6<sup>th</sup>** day of **May, 2020.**

**MARY KASANGO**

**JUDGE**