



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. CIVIL APPLICATION NO. 13 OF 2019

ROBINSON SIMIYU MWANGA.....1ST APPLICANT

ALPHA KITAZI CHORE.....2ND APPLICANT

VERSES

IEBC.....1ST RESPONDENT

BILHA KIPTUGEN.....2ND RESPONDENT

KHAEMBA PATRICK SIMIYU.....3RD RESPONDENT

RULING

1. By their application dated 9th April 2019, the Applicants prayed for the following orders;

a. That the court be pleased to issue an order for stay of warrants of arrest issued by the Deputy Registrar against the Applicants on the 28th March, 2019 pending the hearing and determination of this reference.

b. That the court be pleased to set aside and review the decision of the Deputy Registrar made on 17th January, 2019 on the questioned items 1-4.

c. That the bills be taxed afresh before a Deputy Registrar other than D. Wangeci.

2. When the application came up for hearing the 3rd Respondent raised a preliminary objection on various grounds including the fact that this matter was time barred and was filed contrary to the provisions of rule 11 of the Advocates Remuneration Order, 1962.

3. The said objection was to the effect that the objection violated the provisions of section 6 of the Oaths and Statutory Declarations Act inter alia. That there was no affidavit in support of the application.

4. The court directed the parties to file written submissions to dispose the same and indeed they have complied. Short of reproducing the said rival submissions the issue which has attracted my attention is that which was raised in the preliminary objection on the question of whether the reference was filed within the stipulated time.

5. The 3rd Respondent contends that the same was filed way after the expiry of the 14 days stipulated by the rules and on that ground the same ought to be disallowed. He proceeded to cite the provisions thereof as well as other legal authorities.

6. The Applicants on their part seemed not to deny the same save to state that the delay was occasioned by the Deputy Registrar who failed to give the reasons as required within the stipulated time.

7. The decisions in respect to this ground of objection will essentially determine whether the court should consider the other grounds and the entire reference.

8. I have perused the record as well as the attachment's to the affidavits and its clear that the Deputy Registrar delivered her decision on 17th January, 2019 in which she ordered the Applicants to pay the Respondents the sum of kshs.5,195,545 and 6,868,276,160 respectively.

9. On the 22nd January, 2019 the Applicants wrote to the Deputy Registrar demanding reasons and in particular in respect to items 1, 2, 3,

and 4.

10. The Deputy Registrar on 29th January, 2019 wrote to the Applicants counsel stating that her reasons were contained in the ruling delivered on the 17th January, 2019.

11. It appears that the applicants did not thereafter file their reference and the execution proceedings were commenced by the 3rd Respondent.

12. Was the reference thus filed within the stipulated time? The law governing the timelines is provided under Rule 11 of the Advocates Act which states as follows;

11(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 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.

(4) the high court shall have power in its discretion by order to enlarge the time fixed by sub paragraph (1) or sub paragraph (2) for the taking of any steps: 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."

13. Clearly and as admitted by the Applicants in their submissions the time of filing this reference had lapsed. The same ought to have been filed 14 days after the letter of response by the Deputy Registrar dated 29th January, 2019. The same would have complied with the provisions of rule 11(2) above.

14. This chamber summons was filed on the 11th April, 2019 which was almost 70 days from the date the Deputy Registrar gave her decision following the Applicants demands for the reasons. The proper recourse in my view was for the Applicant to have sought the leave of this court pursuant to rules 11(4) above.

15. To simply acknowledge the delay and expect the court to agree with you is fatalistic to say the least. Having known that there was inordinate delay it would have been appropriate for the applicant to do what the rules demand. In a nutshell the courts hands are tied. It cannot move suo moto to extend the time without being moved and the other players notified.

16. In my view therefore, on this ground alone the application cannot stand. Its acknowledged that there is execution proceeding as well as other processes which have taken place. Respectfully, I do not find the deputy registrar complicit herein. There was no material placed before this court that she caused the delay. Even if there was, there was no reason why the Applicant did not apply for leave to enlarge the time.

17. There may have been other plausible reasons to consider the reference for instance whether the consent between the Respondent and the Applicants to settle the amount at kshs. 1 million was valid or not as well as whether the amount capped at kshs. 5 million by the election court was full and final figure on costs.

18. For now and for the reasons given above I do uphold the preliminary objection dated 29th April, 2019 and dismiss this reference with cost to the 3rd Respondent.

Dated, signed and delivered in open court at Kitale this 11th day of June, 2019.

H.K CHEMITEI

JUDGE

11/6/19

In the presence of :-

Kembero for the 3rd Respodnent

Khisa holding brief for Maremu for the Applicant

Court Assistant – Kirong

Ruling read in open court.