



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 214 OF 2014

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED.....PLAINTIFF

AND

WINNIE NJERI.....1ST DEFENDANT

ALEX GATHIRUA.....2ND DEFENDANT

RULING

1. In the Chamber Summons dated 21st August, 2019, the 2nd Defendant has prayed for the following orders:

a. That the Honourable Court hereby enlarges time within which to file a Reference against the decision of the Taxing Officer delivered on 16th January, 2019.

b. That leave be and is hereby granted to the 2nd Defendant to file a Reference out of time.

c. That the cost of this Application be provided for.

2. The Application is supported by the Affidavit of the 2nd Defendant's advocate who has deponed that the Applicant filed his Bill of Costs dated 15th August, 2018 on 4th October, 2018; that the said Bill of Costs was scheduled for Taxation on 31st October, 2018 and that on the said date, the Bill of Costs proceeded unopposed.

3. The 2nd Defendant's/Applicant's advocate deponed that the Taxing Officer scheduled the Ruling for 29th November, 2018, on which day she was not sitting; that he was informed that the Ruling will be delivered on Notice and that to date, he has never been served with any notice for the Ruling date.

4. Counsel deponed that in July, 2019, while perusing the court file, he established that the Taxing Officer had delivered the Ruling in his absence on 16th January, 2019; that on perusal of the Ruling, he established that the Plaintiff had opposed the Bill of Costs and yet he was never served with any documents in opposition to the Bill of Costs and that the Applicant is not satisfied with the decision of the Taxing Officer and prefers to file a Reference.

5. The Applicant's counsel finally deponed that the time stipulated for the filing of a Reference has since lapsed; that the failure to file a Reference within the stipulated time was in advertent and excusable and that the Applicant has sufficient cause in seeking for the prayers in the Application.

6. The Plaintiff's advocate filed a Replying Affidavit in which he deponed that after the 2nd Defendant filed the Bill of Costs, the Taxing Officer directed that the same be canvassed by way of written submissions; that he filed his submissions dated 19th November, 2019 and served the same the following day and that when the matter came up for Ruling on 29th November, 2019, they were advised that the Ruling will be delivered on notice.

7. According to the Plaintiff's advocate, he was also not served with any notice; that he was however diligent and kept on checking with the registry to confirm if the Ruling had been delivered and that if the Defendants' advocate had employed the same due diligence, he would have known about the Ruling in good time.

8. The Plaintiff's counsel finally deponed that it would be prejudicial to allow the 2nd Defendant to file the Reference out of time, nearly one year after the said Ruling was delivered and that the Taxing Officer duly followed and adhered to the provisions of the Advocates Remuneration Order in arriving at her decision. The 2nd Defendant's/Applicant's advocate filed his submissions and authorities which I have considered. The Plaintiff advocate's submissions are not on record.

9. It is not in dispute that the Taxing Officer delivered her Ruling in respect of the 2nd Defendant's Bill of Costs on 16th January, 2019. The record shows that although the said Ruling was scheduled for 29th November, 2018, the same was not ready. Although the Ruling was to be delivered on notice, neither the Plaintiff's nor the Defendants' advocates were aware of the Ruling date of 16th January, 2019. It was only much later that the 2nd Defendant discovered that the Ruling had been delivered, whereafter he filed the current Application.

10. As was held in the case of **Labh Singh Harman Singh Ltd vs. Attorney General and 2 others (2016) eKLR**, Clause 11 of the Advocate's Remuneration Order gives this court the discretion to extend time for lodging of a Reference against the decision of the Taxing Officer notwithstanding the expiry of 14 days prescribed for the filing of a Reference by a losing party.

11. Since the Applicant was not served with a notice to attend court for the Ruling that was delivered on 16th January, 2019, he would not have been able to file his Reference within 14 days. That being the case, and in view of the fact that it is the right of the Applicant to challenge the Ruling of the Taxing Officer in this court, the interest of justice dictates that the Application be allowed.

12. For those reasons, I allow the Application dated 21st April, 2019 as follows:

a. That the time within which to file a Reference against the decision of the Taxing Officer delivered on 16th January, 2019 be and is hereby enlarged.

b. That leave be and is hereby granted to the 2nd Defendant to file a Reference out of time.

c. The Reference against the decision of the Taxing Officer to be filed within 30 days of today's date.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF JUNE, 2020.

O.A. ANGOTE

JUDGE