



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISCELLANEOUS CAUSE NO. 341 OF 2013

MURI MWANIKI & WAMITI ADVOCATES.....ADVOCATES/APPLICANT

VERSUS

MAKOMBOKI TEA FACTORY COMPANY LIMITED.....CLIENT/RESPONDENT

RULING

1. The application before me is for the enlargement of time for lodging a Notice of Objection to the decision of the Taxing Officer.
2. The decision was pronounced on 20th July 2015, in the absence of the applicant.
3. The explanation tendered by the applicant, for its failure to attend court on 20th July 2015 was that its advocates had noted in their diary, the fact that the Ruling was scheduled to be delivered on “Wednesday 20th July 2015?”.
4. Consequently, the applicant went to court on Wednesday 22nd July 2015.
5. The applicant provided the court with a copy of the advocate’s diary, in which it is shown that this case was scheduled to come up on 22nd July 2015.
6. In answer to the application, the respondent noted that the confusion on the part of the applicant was due to the confusion between the date and the day, specified on the Notice which the court issued.
7. I have perused the Notice which is in contention. It is dated 15th July 2015, and was signed by Hon. E. Tanui, the learned Deputy Registrar of the Milimani Commercial & Admiralty Division of the High Court.
8. The Notice indicated that the parties should take Notice that

“the Ruling in the above matter will be delivered on Wednesday the 20th day of July 2015, at 9.00 a.m, in Chambers No. 227, 2nd Floor?.

9. A look at the diary reveals that the 20th day of July 2015 was a Monday; not a Wednesday.
10. According to the respondent, the practice of advocates is to always go by the dates, not by the days of the week.
11. The respondent did not provide the court with a basis upon which the court could accept as accurate, the contention that advocates would normally only go by way of the date shown on the Notice served upon them. Therefore, there is no material which I can rely upon, to persuade me that the respondent was correct.
12. In any event, it is obvious that it is the Notice which the court served upon the parties, which brought about the confusion.

- 13.It would be unfair to have the applicant bear the burden of the confusion caused by the court.
- 14.But why did not the applicant act sooner?
- 15.It says that the court file had been missing from the registry.
- 16.However, the respondent insists that the court file had not been missing at all. If anything, the file was always available, as can be gleaned from the fact that the respondent was able to take steps to extract the certificate of Taxation.
- 17.Of course, once the Bill of Costs was taxed, the respondent who was in court when the Taxing Officer delivered her Ruling, knew the exact factual position.
- 18.In contrast, the applicant, who did not know that the Ruling on the taxation had been delivered, would not be as focused as the respondent, in its search for the court file.
- 19.As regards the delay of 23 days from the date when the applicant was served with the certificate of taxation, I hold the considered view that that period of time does not constitute such an
- 20.inordinate delay as to be inexcusable.
- 21.Finally, the applicant is only seeking an opportunity to challenge the decision of the Taxing Officer. As both parties would be accorded a hearing on the Reference, none of them would be prejudiced if the applicant was given the opportunity to file a Reference.
- 22.Accordingly, the application dated 11th September 2015 is allowed. The time for the filing of the Reference from the decision of the learned Taxing Officer is enlarged by 7 days from today.
- 23.The costs of the application shall be in the cause, in the Reference. If the Reference succeeds, the costs shall be awarded to the Applicant; whilst if the Reference fails, the Respondent would also have the costs of this application.

DATED, SIGNED and DELIVERED at NAIROBI this 2nd day of February 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Kogai for the Advocates/Applicant

Kariuki for the Client/Respondent

Collins Odhiambo – Court clerk.