



**REPUBLIC OF KENYA**

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

**CIVIL MISC. APP. NO. 452 OF 2012**

**KAHUTHU & KAHUTHU ADVOCATES..... APPLICANT**

**V E R S U S –**

**PLANTATION PLANTS (K) LTD.....RESPONDENT**

**RULING**

1. The applicant took out the motion dated 19<sup>th</sup> August 2015 where they sought orders to wit:

***1. The honourable court do review the decision of the taxing officer dismissing applicant's bill of costs dated 10<sup>th</sup> August 2015 on a preliminary objection***

***2. The applicant be allowed to file this reference out of time.***

***3. The costs be in the cause.***

2. When the motion came up for hearing on 4<sup>th</sup> April 2016 before Lady Justice Aburili , Mr. Kahuthu appearing for the applicant sought leave to withdraw prayer 1 of the application. There being no objection prayer 1 was withdrawn. The court thereafter directed the parties to canvass prayer 2 by way of written submissions, which they did. I have considered the submissions and the grounds set out on the face of the motion, the facts deponed in the affidavits filed in support and against the application and the grounds of opposition.

3. It is the applicant's submission that they be allowed to file a reference out of time. They contend that their bill of cost dated 10<sup>th</sup> August 2012 was dismissed on the 17<sup>th</sup> June 2015 on a preliminary objection raised by the respondent. They claimed that upon the dismissal of the Bill of Costs, they immediately applied for reasons for the dismissal vide a letter dated 17<sup>th</sup> June 2015 and followed up with another letter dated 26<sup>th</sup> June 2015. They however aver that they were not able to receive the ruling until 6<sup>th</sup> August 2015 which ruling was certified by the deputy registrar on 5<sup>th</sup> August 2015. They requested the court to exercise its powers under paragraph 11(4) of the Advocates (Remuneration Order) and enlarge time.

4. The respondent submitted that the reference has been brought out of time and the applicant has not satisfactorily demonstrated why the court should exercise its discretion in favour of their application. It argued that the applicant failed to inquire further from the deputy registrar why the ruling was taking long. It was the respondent's submission that the applicant has not given a plausible explanation why it did not file a reference within time.

5. I have considered the arguments by the parties. The applicant has requested this court to exercise its discretion and enlarge time for them to file a reference out of time. The applicant has explained the reason for their delay. In particular, the applicant has explained that upon dismissal of their bill of costs on 17<sup>th</sup> June 2015, they immediately applied for reasons for the dismissal of the bill of costs through a letter dated 17<sup>th</sup> June 2015 which letter they followed with another one dated 26<sup>th</sup> June 2015. They further claim that they had not received the certified copy of the ruling which they eventually received on 6<sup>th</sup> August 2015. It is this delay in obtaining the certified copy of the ruling that led to the filing of the reference out of time. I have looked at the evidence annexed to the subject application. Indeed as intimated by the applicant, they wrote to the deputy registrar requesting for the certified copy of the ruling

vide a letter dated 17<sup>th</sup> June 2015. They later followed up this letter with another dated 26<sup>th</sup> June 2015 where they requested to be supplied with reasons on each of the items and the ruling. They thereafter received the ruling which ruling was certified on 5<sup>th</sup> August 2015 and they subsequently filed this application on 19<sup>th</sup> August 2015 which was 14 days later.

6. Paragraph 11(4) of the Advocates (Remuneration) Order grants this court the power to enlarge time at its own discretion. The discretion however should be exercised sparingly and the party seeking such enlargement must advance good reasons for the delay. For the applicant to file a reference under paragraph 11, of the Advocates (Remuneration) Order, they ought to obtain reasons from the taxing officer first. A copy of the certified ruling is also essential. The ruling was obtained late, to be specific on 5<sup>th</sup> August 2015. This delay to obtain the ruling and the reasons caused the delay. I therefore find that the cause of the delay in filing the reference out of time has been satisfactorily explained. The respondent will not suffer any prejudice that cannot be compensated by way of costs.

7. In the interest of justice therefore, I allow the applicant to file their reference out of time. Costs to the respondent.

Dated, Signed and Delivered in open court this 2<sup>nd</sup> day of December, 2016.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant