



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
IN THE HIGH COURT
MISC. CIVIL CASE NO. 511 OF 2011

RUMBA KINUTHIA & CO. ADVOCATES.....APPLICANT

VERSUS

KIONGO MAINA.....RESPONDENT

RULING

The Application before this Court is dated the 12th March 2013, it is brought under Order 50 Rule 6 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3 and 32A of the Civil Procedure Act, Cap. 21, Rule 11(1) (4) of the Advocates (Remuneration) Order, 2009. The Applicant seeks the following orders;

1. THAT this Honourable Court be pleased to grant an order to extend the time limit fixed at (14 days) to enable the applicant lodge an objection to the taxing officer's ruling on this matter.
2. THAT the costs of this application be provided for.

The application is premised on the following grounds:-

- a. The ruling was delivered on the 19th February, 2013 by the Learned Registrar.
- b. The Applicant applied for the certified copies of taxation on the 20th of February, 2013 which were only given to them on the 8th of March, 2013.
- c. The intended objection having been so rendered out of time as per the (14 days) time limit, orders for such extension for the filing of the objection are thereby prayed for.

AND on any other or further grounds to be adduced at the hearing thereof.

The application is supported by the affidavit of GISORE RICHARD MATWERE. In brief this is what he deposes; that their law firm received instructions from the Respondents together with 20 other suits against the Attorney General which were consolidated in HCCC NO. 1411 of 2004. The Respondents were awarded various amounts ranging from Kshs. 1.5 Million as general damages. The relations between their firm and the clients broke down due to the fact that the Respondents disputed the amount the law firm claimed as fees, thereby necessitating Taxation of costs. The Ruling was delivered on the 19th February, 2013 and they requested that they be furnished with the certified copies of the reasons of taxations of the ruling on the 20th February, 2013, the same were not made available to them until the evening of 7th March, 2013. That due to this delay by the registry they were unable to file the intended objection to this ruling within the 14 days stipulated by law.

The application was opposed. Mr. Kionga Maina filed a replying affidavit dated 5th of April 2013. He deposes as follows; that the application is fatally defective. The applicant has made an application and purported it to stand for all the matters ranging from Miscellaneous Application 510 to Miscellaneous Application 516; that it is incurably defective some cannot purport to make an application and have it stand for all the other applications relating to it; that on the 19th day of February, 2013, when the ruling on the taxation of the matter was read both the Applicant and him were represented by an Advocate.; that the Applicant's advocate can confirm that typed copies of the ruling were all ready and therefore the element of reasons therefore need not arise as they were there when the ruling was read; that substantial time has elapsed between the delivery of the ruling on taxation and the making of the applicant's application and that the prescribed time limit for filing any intended reference to the ruling on taxation has passed; that the Applicant's assertion that the reasons for the ruling were received at a later date is utterly false as the reasons for the ruling were delivered the same day as the ruling itself.

The other facts deposed are on the background of this application and what the respondents have gone through as they await the awards the court granted them.

The applicant filed a supplementary affidavit responding to the replying affidavit; on the issue that the chamber summons is defective the counsel responded by stating that the Deputy Registrar conducted the proceedings in one file and delivered a joined verdict in all the file; that there is nothing wrong in filing a single application; that Mr. Kiongo Maina's affidavit should be expunged from the record as he purports to swear an affidavit for all the respondents in the application, that this offence the provisions of the Oaths and Statutory Declaration Act no. 15 of the Laws of Kenya as read with Order 19 of the Civil Procedure Rules 2010; that due process had to be followed in getting certify copies of the ruling and they made their application through their letter dated 20th February 2013 which they filed in court the same day; that the intended Reference is very crucial in the face of the glaring errors whereby the learned Taxing Master, inter alia, inexplicably granted the same costs against a Petitioner who was awarded Kshs. 2.5 million as the one awarded Kshs..1 million; that the instant application was filed a day after the certified ruling was delivered to them and therefore it follows that it would not have been possible to list the items they were objecting to without a copy of the Ruling as envisaged in paragraph 11(1) of the Advocates Remuneration Order; that paragraphs 11 (14) of the Remuneration Orders clothes the High Court with unfettered powers to enlarge time upon application by the parties; that the ruling that was given to them on the 8th of March 2013, reveals that the same was certified on the 7th of March and therefore they could only get it on the next day.

Mr. Okindo in his oral submissions in court reiterated what is deposed in the affidavits and submitted further that the application is not defective as the ruling of the Deputy Registrar referred to several other files and the taxation was done jointly and the Deputy Registrar gave an omnibus ruling as the ruling refers to Miscellaneous Application no. 511 to 516; that therefore they were entitled to do a joint application. He urged the Court to strike out the affidavit of Mr. Kiongo in the absence of any authorization of his co-respondents.

Mr. Ligunya in response argued that Mr. Kiongo does not state in his affidavit that he is swearing the affidavit on the authorization of the other co-respondent. Counsel argued that even if time is extended let the money be placed in joint account in the names of the parties; that the ruling bears the date it was certified and it was typed; that the rules in the Advocates Remuneration Order does not talk of getting certified ruling but only reasons; that the Deputy Registrar taxed each matter individually and gave a ruling on it and therefore it was necessary to seek an extension for each matter; that the application is therefore incompetent and should be dismissed.

In response Mr. Okindo submitted that their letter dated 20th February 2013 shows the date when they sought for the ruling; that the application for extension of time relates to all files; that the Court in considering this application should bear in mind the overriding objectives of the Civil Procedure Act and that the objection raised is technical and should be dismissed.

I have considered the facts as deposed in the affidavits and submissions. The first issue that I have to deal

with is whether the application is competent. .The application seeks to extend the time limit fixed at 14 to enable the applicant lodge an objection to the Taxing Master’s ruling in Miscellaneous Application No. 511 to 516 of 2011. I have perused each of these files and do not find any order consolidating the said files. In the ruling dated 19th February 2013, the Deputy Registrar gave a ruling and at pages 9 to 13 of her ruling she referred to each case individually setting out what she had taxed as costs. Under section 11 (1) of the Advocates Remuneration Order, a party who seeks to object to the decision of a taxing master must give notice in writing with 14 days from the date of the ruling and under section 11(4) a party can seek to enlarge the time fixed under paragraph (1). Having read the said provisions it is my view that it is presumed that a Reference or any application for enlargement of time shall be filed for each matter unless there was an order of consolidation. I agree with the submissions of Mr. Ligunya that the applicant ought to have filed an application for extension of time in each of the files as each file had its own Bill of Costs which was taxed and ruling given. The application as it is incompetent. The applicant should file an application in each file. The provisions of section 1(A) and 1(B) of the Civil Procedure Act cannot assist the applicant as the Taxing Master did not give a consolidated Ruling. I will therefore not make a decision on the merits of the application; the application is dismissed for being incompetent with costs to the respondent.

Order accordingly.

Dated, signed and delivered this 11th Day of November 2014

R. E OUGO

JUDGE

In the presence of:-

.....**APPLICANT**

.....**RESPONDENT**

.....**COURT CLERK**