



**Akello v Clerk Migori County Assembly & another (Petition
E012 of 2022) [2024] KEELRC 1737 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1737 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E012 OF 2022**

**CN BAARI, J
JULY 11, 2024**

BETWEEN

MEREZA ATIENO AKELLO PETITIONER

AND

THE CLERK MIGORI COUNTY ASSEMBLY 1ST RESPONDENT

MIGORI COUNTY ASSEMBLY 2ND RESPONDENT

RULING

1. This ruling relates to an application dated 15th November, 2023, brought pursuant to Paragraph 11 (2) of the [Advocates Remuneration order](#), 2014 and Section 51(2) of the [Advocates Act](#). The Applicants seeks orders THAT: -
 - i. Spent.
 - ii. The Court does extend time such time limited in Rule 11(1) and (2) of the [Remuneration Order](#) and the Respondents/Applicants be granted leave to request reasons from the Hon. Deputy Registrar, and if need be, file an objection and a taxation reference to this court against the ruling of the Court's Taxing Officer, Hon. M. Shimenga delivered on September, 7th 2023.
 - iii. Leave granted in prayer (1) above does operate as a stay of execution of the ruling of the Taxing officer aforesaid and any other consequential proceedings.
 - iv. The Objection to the Taxing officer and the application for reasons annexed hereto be deemed to have been dully filed within time and served upon payment of the requisite fees if need be
 - v. Costs of this application be provided for.
2. The application is supported by grounds on the face and the affidavit of Vincensia Kionge, the Clerk of the 1st Applicant. The gist of the application is that the Applicants realized that the bill of cost was



taxed at Kshs 722,042/=, which they aver was excessive since the decretal sum and the value of the subject matter was Kshs 177,000/=.

3. The Applicants avers that the Hon. Taxing Officer erred in principle in proceeding with unilateral taxation without giving the Applicants an opportunity to participate by changing dates at the convenience of the Petitioner/Respondent, and not notifying the Applicants, thereby taxing the bill of costs unopposed.
4. It is the Applicants' further assertion that the Respondent/Petitioner failed to serve her bill of costs even upon demand.
5. It is the Applicants' case that the instruction fee issued to the Respondent at Kshs 500,000/= or thereabout, was not only excessive, but a total breach of Schedule 6(1)(j) of the [Advocates Remuneration Order](#).
6. That item 10-13, taxed at Kshs 5,000/=, were unreasonably excessive, being that Migori County Assembly and the Firm of the Respondent are both in Migori town, filing was done through e-filing, and all services were effected through email, hence there was no justification for taxing the services at Kshs 5000/=.
7. The Applicants aver that they were denied their right to be heard and that the bill in issue was erroneously taxed.
8. The Applicants finally contend that unless this Court intervenes and allows this application, they shall be high prejudiced.
9. The Petitioner/Respondent opposed the application vide a replying affidavit sworn on 22nd February, 2024 by one Mereza Atieno A. Kell, the Petitioner/Respondent herein. She avers that the bill giving rise to the application herein was filed via e-filing on 13th February 2023, and that counsel for the Applicants was served with a mention notice for 20th March, 2023 and an affidavit of service duly filed.
10. The Respondent avers that the Applicants cannot claim that they were denied a chance to be heard when they could easily access any document including the bill of costs they wanted through the e filing portal or by making a copy from the court file.
11. She avers that no three clear days' notice was given to her or her advocate as required under the law particularly Rule 11(4) of the [Advocates Remuneration Order](#).
12. The Applicants further state that from the attachments requesting for the bill of cost, the requests were made when the court had already fixed the matter for ruling from the attached screenshots, and nothing shows that the messages were ever received as alleged.
13. It is the Respondent's case that there was unreasonable delay in filing the application herein, and the same has not been explained to this honourable court. She avers further that the Applicants served the application herein, but never served notice of the date when the same was to be in court, and as such, she had to learn of the said date from the e-filing portal, thus the delay in filing the response herein together with submissions.
14. It is her assertion that the Applicants have not advanced any proper reason as to why the court order for extension of time should act as a stay, and that in any case where the court issues an order for stay, then the Applicants ought to be ordered to deposit an amount equivalent to the costs awarded by court being Kshs. 722,042.00.



15. It is the Respondent/Petitioner's position that allowing the application herein, shall highly prejudice her as she will be denied the right to enjoy the fruits of her judgement.
16. The Respondent prays that the application be dismissed with costs.
17. Parties canvassed the application by written submissions and the submissions have been duly considered.

Analysis and Determination

18. I have considered the application, the grounds and affidavits in support thereof, the replying affidavit in opposition, and the parties' submissions. Two issues fall for determination: -
 - i. Whether the Applicants has justified extension of time to seek reasons and to file a reference against the ruling of the Taxing Officer; and
 - ii. Whether a stay of execution of the ruling of the Taxing Officer should be granted.
19. Paragraph II of the *Advocates (Remuneration) Order* provides *inter alia*: -
 - “(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 may 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.
 - (3)
 - (4)
20. On whether the Applicants have justified extension of time to seek reasons and to file a reference against the ruling of the Taxing Officer, their failure to seek reasons and file an objection is attributed to not having been served with the bill of costs and the delivery of the ruling in their absence.
21. The guiding principles in considering an application for extension of time was enunciated by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others, SC Application No. 16 of 2014*; [2014] eKLR as follows:
 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis.
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted.



- vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
22. I note that the first affidavit of service filed by the Petitioner/Respondent, intimating service of assessment notice is said to have been served on 9th March, 2024. A second affidavit shows that the assessment notice was served on 20th March, 2024. I further note that the last notice is dated 16th March, 2024 and served upon the Applicants on 20th March, 2024, just about four (4) days to the assessment.
 23. It is also true that other than the assessment notices, nothing shows that the actually bill of costs was served upon the Applicants, which in my view, lends credence to the Applicants' assertion that they were not served with the subject bill. Further, for the Petitioner/Respondent to suggest that the Applicants ought to have accessed the bill from the on-line filing portal, could equally be construed as lack of service.
 24. It is further not shown that the Applicants were served with notice of the ruling subject of the objection, and which ruling indicates that it was delivered in their absence.
 25. The Respondent/Petitioner has also not shown any prejudice she stands to suffer if the time sought is granted, and further noting that the amount in issue is a bill against a public entity, leads to me to the conclusion that the Applicants' prayer for extension of time is merited, and is allowed as prayed.
 26. On whether the Applicants merit stay of execution of the ruling of the Taxing Officer, the court is called upon to determine whether or not to exercise its discretionary power in favour of the Applicants.
 27. The court's exercise of discretion is guided by amongst others, the grounds set out in the case of *Stephen Wanjobi v Central Glass Industries Ltd Nbi* HCCC No. 6726 of 1991 where the Court emphasized that:
 - “For the Court to grant stay of execution there must be:
 - (a). Sufficient cause.
 - (b). Substantial loss.
 - (c). No unreasonable delay and security offered for due performance of the decree.”
 28. This Court has already made a decision allowing the Applicants' prayer for extension of time to lodge their objection against the ruling of the Taxing Officer. This decision will no doubt be rendered nugatory if execution of the ruling subject of the objection is not stayed. Taking this into consideration, coupled with the amount of the taxation and subject of the objection (Kshs. 722,042.00), means that the balance of convenience tilts in favour of allowing the prayer for stay of execution, and which is hereby granted.
 29. In the end, the application succeeds and orders granted as follows:
 - i. An order be and is hereby issued extending time for the Respondents/Applicants to request reasons from the Hon. Deputy Registrar on the ruling delivered on 7th September, 2023.
 - ii. An order staying the execution of the ruling of the Taxing Officer aforesaid, and any other consequential proceedings be and is hereby granted.



- iii. The Objection to the Taxing Officer's ruling and the application for reasons annexed hereto, be and is hereby deemed to have been dully filed within time and served upon payment of the requisite fees.
- iv. Parties to set the Objection for hearing on priority basis.
- v. I make no orders on costs.

30. Orders accordingly.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 11TH DAY OF JULY, 2024.

C. N. BAARI

JUDGE

Appearance:

N/A for the Respondents/Applicants

N/A for the Petitioner/Respondent

Ms. Debra O. - Court Assistants

Page 4 | 4 Misc. E012 of 2022 - Ruling

