



Manyonge Wanyama & Associates v County Government of Kisii (Miscellaneous Cause E049 of 2022) [2024] KEELRC 1774 (KLR) (4 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1774 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CAUSE E049 OF 2022**

CN BAARI, J

JULY 4, 2024

BETWEEN

MANYONGE WANYAMA & ASSOCIATES APPLICANT

AND

COUNTY GOVERNMENT OF KISII RESPONDENT

RULING

1. This ruling relates to an application dated 5th September, 2023, brought pursuant to Order 11 of the *Advocates (Remuneration) Order* 2014. The Applicant seeks orders That: -
 - i. This Honourable Court be pleased to enlarge the time fixed for filing this application and proceed to deem the same as duly filed within time.
 - ii. The ruling and/or assessment of the Applicant's Bill of costs dated 12th September, 2022 delivered on 26th July, 2023 be varied.
 - iii. The Honourable Court be pleased to re -assess or order for re- assessment of item 1 of the Applicant's Bill of costs dated 12th September, 2022.
 - iv. The Honourable Court be pleased to grant such orders as it considers just and fair in the circumstances.
 - v. Costs of this application be provided for.
2. The application is supported by grounds on the face and the affidavit of Mosota Nyamweya. The gist of the application is that the time for filing of such an application as per Order 11 expired on 1st September, 2023, and that this Court has the power and discretion to enlarge this time.
3. The Applicant avers that the learned Taxing Officer erred by failing to take into account all relevant facts in considering the instruction fees, hence arriving at an erroneous assessment.



4. It is the Applicant's further assertion that the Taxing Officer erred in law and in fact by failing to give reasons for arriving at Kshs. 600,000/- as instruction fees, and by failing to appreciate that it is against public policy to award such hefty fees against the Respondent/Applicant.
5. The Respondent opposed the application vide a replying affidavit sworn on 18th March, 2024 by one Peter Wanyama- advocate, wherein, he avers that *vide* instructions issued in a letter dated 15th July 2022, the Objector instructed his Law Firm to urgently come on record for Gusii Water and Sanitation Company Limited, Hon. Charles Onyancha, CEC Water, Environment and Natural Resources and Robert Ongeru.
6. The Respondent avers that the Petition against the Objector addressed intricate matters, assigning a burdensome responsibility to the law firm that it required extensive examination of the complex interactions between constitutional and legal provisions pertaining to corporate governance guidelines.
7. He avers that the Applicant/Respondent used its valuable time and resources in drawing the responses and attending Court sessions, and more so representing 3 parties in a suit, therefore, Kshs. 600,000/= as taxed is fair compensation for the work done.
8. The Applicant/Respondent further states that objection to a decision on taxation and appeal to the Court of Appeal have strict timelines governed by the *Advocate Remuneration Order*. It is its position that the Objector was fully aware of the strict timelines provided in law and despite their absence in court, the Court in its volution forwarded the ruling to the parties the following day.
9. It is the Applicant/Respondent's case that he cannot be denied the right to enjoy the fruits of his judgment on account of laxity and unreasonable delay, taking into account that the Objector is aware of the statutory time limit.
10. It is his assertion that the delay in filing the relevant application in so far as Section 11 of the *Advocates Remuneration Order* is concerned in not excusable.
11. It is his position that extension of time is not a right of a party, but an equitable remedy only available to a deserving party at the discretion of the Court, and that the Objector bears the burden of demonstrating to the satisfaction of the Court the cause of the delay, which the Objector herein has failed to do.
12. The Respondent avers that allowing this application would undo what a vigilant party could rightly have achieved, thus violating the maxim that; equity aids the vigilant and not the indolent.
13. That the Objector's Application lacks merit, is made in bad faith, is an afterthought and a typical example of an abuse of the process of this Court.
14. The Respondent prays that the application be dismissed with costs.
15. Parties canvassed the application by written submissions and the submissions have been duly considered.

Determination

16. I have appraised the application, the grounds and affidavit in support thereof, the replying affidavit in opposition and the parties' submissions. Two issues fall for determination: -
 - i. Whether the Respondent/Applicant has justified extension of time to file the instant application



- ii. Whether the award by the Taxing Officer should be varied and/or reassessed.
17. 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)
18. The advocate-Client bill of costs giving rise to this reference was taxed on 26th July, 2023 and a certificate of taxation issued on 27th July, 2023. The instant application is dated 5th September, 2023, meaning therefore, that the filing of the application was late by about 11 days.
19. 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.
20. The Respondent/Applicant attributes the delay in filing the reference to inadvertently failing to diarize, and which he terms as an excusable mistake and which should not be visited upon the Objector. A glance at the ruling of the Taxing Officer indicates that the same was issued in the absence of both parties.
21. Considering the Respondent/Applicant’s averments, the fact that the instant application was brought without undue delay, and for reason that the Respondent has not shown any prejudice he stands to suffer if time sought is granted, coupled with the public interest at stake, I find the application to have merit.



22. In light of the foregoing, I proceed to allow the prayer for enlargement of time as prayed.
23. On whether the award by the Taxing Officer should be varied and/or reassessed, the Applicant seeks this prayer on the basis that the figure of Kshs. 600,000/- awarded as instruction fees is excessive.
24. The Applicant further submitted that item No.1 of the Applicant/Respondent's Bill of Costs dated 12th September, 2022 taxed at Kshs. 600,000/= was not based on any sound legal principle given the fact that the matter in question was compromised within a short time, and that it did not involve any complex or novel issues which required any legal research whatsoever.
25. The Respondent/Applicant's further argument is that the Taxing Officer failed to appreciate that the objector is a public entity which is required under the law to expend public resources with due diligence and that Kshs. 600,000/= was way too high for the short services offered by the Applicant / Respondent.
26. The Applicant/Respondent on his part, argued that the task bestowed to him involved analyses of the interplay of complex Constitutional and legal provisions, dealing with corporate governance guidelines in the water sector and management of employees in the that sector, and subsequent responses in respect to the Petition and issues raised.
27. The general rule on taxation references, is that the High Court (read ELRC) will not interfere with the decision of a Taxing Officer unless there exists an error in law or in principle. The Court of Appeal in *Kipkorir Titoo & Kiara Advocates –Vs- Deposit Protection Fund Board* [2005] eKLR, held thus: -

“On reference to a judge from the taxation by the taxing officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”
28. In the impugned ruling, the Taxing Officer stated thus: -

“Item No. 1 on instructions fees, I am guided by the provisions of Schedule 6 paragraph 1(j) (ii) on Constitutional Petitions and Prerogative Orders; where the matter is opposed and found to satisfy the criteria set out above, such sum as may be reasonable but not less than Kshs. 100,000/-/ I have charged item no. 1 in the sum of Kshs. 600,000/-, I have taxed off the sum of Kshs.900,000/=”
29. Other than the amount charged and that which was taxed off, the Taxing officer did not give reasons for the amount of the taxation of item No. 1 in the bill of costs. The court further notes that the Applicant/Respondent ceased acting for the Applicant/Objector before the matter was concluded.
30. Considering that the petition was not complex and for reason that the objector is a public entity, I deem the amount of Kshs. 600,000 awarded on account of instruction fees excessive.
31. In the end, the reference succeeds and orders granted as follows:
 - a. That the prayer to enlarge time is allowed and the Chamber Summon application filed herein is deemed as filed within time.
 - b. That the Advocate-Client bill of costs filed in this matter be remitted for re- assessment of item No. 1 of the Applicant's Bill of costs dated 12th September, 2022.
 - c. I make no orders on costs.
32. Orders accordingly.



DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 4TH DAY OF JULY, 2024.

C. N. BAARI

JUDGE

Appearance:

Mr. Kurgat h/b for Mr. Wanyama for the Applicant/Respondent

Mr. Kaburi present for the Respondent/Objector

Ms. Anjeline & Debra -Court Assistants

