



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC MISCELLANEOUS APPLICATION NO. 218 OF 2017**

**GITHINJI KIMAMO & COMPANY ADVOCATES....APPLICANT**

**VERSUS**

**ENDMOR STEEL MILLERS LTD.....RESPONDENT**

**RULING**

The Respondent brought the application dated 23/01/2020 seeking enlargement of the time within which to file a reference to this court against the decision of the taxing officer delivered on 12/06/2018. It also sought to have the reference it had filed deemed as properly filed even though it was filed out of time. Further, it sought stay of execution of the certificate of taxation dated 12/10/2018 pending hearing and determination of the intended reference and costs of the application.

The application was made on the grounds that the Respondent was aggrieved by the decision of the taxing officer delivered on 12/06/2018, but did not file the reference within time because it was waiting for a copy of the ruling and reasons, if any on the taxed advocate-client bill of costs. It also urged that it was in the interest of justice for it to be allowed to exercise its right of appeal before the Advocate/Applicant levied execution against it.

The application was supported by the affidavit of Kenneth Muriithi, the Respondent's Human Resource Manager sworn on 23/01/2020 who deponed that while the Respondent with the bill of costs intended to appeal against the taxing officer's decision, the Applicant with the bill was intent on levying execution as indicated in their letter dated 15/11/2018, a copy of which he annexed together with the Respondent's response dated 26/11/2018. He pleaded with the court to enlarge time for it to file an appeal against the taxation.

The application was opposed by the Respondent through the replying affidavit of James Murimi Githinji sworn on 17/07/2020. Mr. Githinji Advocate who practices with the Applicant deponed that the application was an afterthought and was brought in bad faith because the Respondent was represented in the taxation of the bill of costs. He deponed that even before the ruling and reasons were delivered, the Applicant had duly served the Respondent with a notice of the ruling date. He annexed a copy of the affidavit of service sworn on 08/06/2018 notifying the Respondent of the ruling date. He also deponed that after the ruling was delivered, the Respondent's counsel notified the Applicant of the taxed bill through email. He added that after the bill of costs was taxed on 12/06/2018, G. Kiama, a manager of the Applicant and the Applicant's director Paul Watoro Gichu engaged him in an attempt at out of court negotiations of the taxed bill and made some payments but the cheques it issued bounced or were stopped in bad faith. He annexed the letter and email dated 16/03/2018 authored by the Applicant's counsel inquiring about the cheques.

Mr. Githinji further deponed that the delay of almost two years from the time the ruling was delivered to 03/02/2020 when this application was filed was inordinate and disentitled the Respondent from extension of time. He urged that the Respondent was not deserving because it had not been vigilant or diligent in this matter. He also deponed that the Applicant did not attach any evidence to show that it had attempted to get a copy of the ruling from the court on 12/06/2018 or any other date for that matter.

The Respondent filed a supplementary affidavit sworn by Kenneth Muriithi on 7/08/2020 in which it admitted that it indeed paid some monies to the Applicant and added that the cheques which bounced were replaced by cash.

The matter was canvassed by way of written submissions. The Respondent submitted that it was ready to furnish security for the due performance of the decree taxed costs for the court to grant it orders of stay of execution, it being a condition for granting a stay order at the court's discretion. The Respondent also submitted that it had an arguable reference with high chances of success and that it would suffer irreparable harm if the Applicant proceeded with execution before it was allowed to appeal.

The Applicant submitted that paragraph 11 of the Advocates Remuneration Order enjoined a party objecting to the decision of a taxing officer to do so within 14 days. It added that the Respondent had never raised any objection to the taxation to date and even though the court had a discretion to enlarge the time within which a reference can be filed, a party seeking extension of time has the burden of laying a basis

to the satisfaction of court. The Applicant urged that there was no basis for the Respondent's delay of almost two years.

As to whether the intended reference had merit, the Applicant submitted that being a conveyancing matter, the Applicant had demanded very reasonable fees in line with the Advocates Remuneration Order and added that the taxing officer adhered to the right principles and correctly applied the Advocates Remuneration Order when she taxed off several items from a claim of Kshs.7, 804, 950/= to Kshs. 5,759,508/=. It was also submitted that the Respondent did not deserve orders for stay of execution of the certificate of taxation.

The court has considered the application together with the affidavits and submissions filed by counsel. The issue for determination is whether the Respondent deserves an order for the extension of time within which it is to file a reference against the decision of the taxing master. Paragraph 11 of the Advocates Remuneration Order provides that a reference or objection is to be filed within 14 days. It also gives the court discretion to enlarge the time fixed but this would have to be exercised based on established legal principles. A party seeking extension of time has to demonstrate that it deserves the exercise of the court's discretion in enlarging time and explain the cause for the delay in filing the reference.

The Respondent's explanation for delay was that it took long to get a copy of the ruling delivered on 12/06/2018. There is evidence to show that the Respondent was aware of the ruling date as it was served with a notice for 12/06/2018. There is evidence that the Applicant notified the Respondent of the taxed bill. The Respondent was therefore aware that the bill had been taxed. There is no evidence of any correspondence showing the Respondent made a follow up or even requested the court to furnish it with the ruling or reasons for the taxation. The Respondent cannot be heard to say that the ruling or the reasons were delayed when there is no evidence that it made any effort to follow up the matter.

It has taken the Respondent almost two years to file the application which appears to be an afterthought to this court since the Respondent issued cheques towards payment of the taxed bill. Further, the Respondent filed grounds of objection dated 18/03/2019 in response to the Applicant's application dated 06/02/2019 seeking to enforce the judgement against the Respondent only for the Respondent to turn around and file this application.

The application dated 23/01/2020 lacks merit and is dismissed with costs to the Applicant/Advocate.

**Delivered virtually at Nairobi this 8<sup>th</sup> day of December 2020.**

**K.BOR**

**JUDGE**

In the presence of: -

Mr. Hiram Thimba for the Applicant/Advocate

No appearance for the Respondent/Client

Mr. V. Owuor- Court Assistant