



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC MIS CIVIL APP NO. 20 OF 2018**

IN THE MATTER OF THE ADVOCATES ACT AND IN THE MATTER  
OF THE ADVOCATES REMUNERATION AMENDMENTS ORDER 2014

AND

IN THE MATTER OF TAXATION OF PARTY AND PARTY BILL OF COSTS  
ARISING FROM ENVIRONMENT AND LAND COURT CASE NO 107 OF  
2015 FORMERLY MOMBASA ENVIRONMENT AND LAND CASE NO 119 OF 2015

BETWEEN

HARUN RASHID KHATOR (SUING ON  
BEHALF OF THE ESTATE OF THE LATE  
RASHID KHATOR SALIM(DECEASED).....PLAINTIFF/OBJECTOR

VERSUS

ABDULRAZAK KHALIFA.....1<sup>ST</sup> DEFENDANTS/RESPONDENT  
THEOPISTA MKIWA MAZIGHE.....2<sup>ND</sup> DEFENDANT/RESPONDENT

**RULING**

1. By this Chambers Summons application dated 8<sup>th</sup> August 2018 and filed herein on 24<sup>th</sup> August 2018, the Plaintiff/Applicant prays for Orders as follows: -

- 1.....
- 2.....
3. ....
4. *That time to serve the taxing master with a notice to give reasons on the Ruling delivered on 27<sup>th</sup> April 2018 be extended.*
5. *That the Applicant be granted leave to file objection proceedings out of time.*
6. *That the costs of this application be provided for.*

2. The application which is supported by an affidavit sworn by Natasha Chala Advocate for the Applicant is premised on the grounds inter alia: -

**a) That the 2<sup>nd</sup> Defendant has obtained an award of costs of Kshs 404,677 and the Applicant intend to raise an objection thereto.**

**b) That the requirements of the law is that the Taxing Master should avail reasons for the taxation before an aggrieved party can file an objection thereto;**

**c) That the Ruling on the taxation was delivered without notice and the time to obtain the reasons has lapsed.**

3. The application is however opposed. In a Replying Affidavit sworn and filed herein on 12<sup>th</sup> October 2018 by Brenda Nanzala Mayabi Advocate for the 2<sup>nd</sup> Defendant Counsel avers that the Bill of Costs giving rise to the application was served upon the Applicant on 7<sup>th</sup> November 2017 but the Applicant opted not to oppose and/or challenge the same.

4. Counsel for the 2<sup>nd</sup> Defendant further asserts that the Applicant declined, neglected and/or refused to attend Court on the date fixed for the taxation and hence the Bill was uncontested and was taxed as drawn.

5. I have considered the application and the response thereto. I have also perused the submissions filed by the Learned Advocates for the parties.

6. The power to grant leave extending the period to file an objection out of the statutory period is discretionary and must be considered on a case by case basis. While it is not a right, it must be exercised judiciously and only after a party seeking the exercise of the discretion places before the Court sufficient material to persuade the Court that the discretion should be exercised in his favour.

7. There are in this regard a number of factors which our case law has developed to aid the Courts in deciding whether or not to exercise its discretion in favour of an applicant. As the Court of Appeal stated in *Mwangi –vs- Kenya Airways Ltd (2003) KLR*, some of these factors include: -

**a) The period of delay.**

**b) The reason for the delay.**

**c) The arguability of the appeal.**

**d) The degree of prejudice which could be suffered by the Respondent if the extension is granted.**

**e) The importance of compliance with time limits to the particular litigation or issue; and**

**f) The effect if any on the administration of justice or public interest if any is involved.**

8. In the matter before me, the Ruling giving rise to these proceedings was delivered on 27<sup>th</sup> April 2018. Accordingly, the request for reasons for the taxing master's decision ought to have been filed on or before 11<sup>th</sup> May 2018. According to the Applicant, they were unable to do so as they did not have any notice of the Ruling.

9. A perusal of the record reveals that the Bill of Costs was placed before the Honourable J.N Wandia DR on 27<sup>th</sup> November 2017 for taxation. On that date, the Plaintiffs were unrepresented and Counsel for the 2<sup>nd</sup> Defendant urged the Court to allow the Bill as drawn on the basis that the same had not been opposed.

10. I think if the Honourable Deputy Registrar had delivered her Ruling there and then on the spot, the Plaintiff/Applicant could not have been heard to complain as there was filed an Affidavit of Service indicating that they were served to appear in Court on that day. As it turned out however, the Honourable Deputy Registrar declined the invitation to allow the Bill as prayed at that stage as she was urged by the 2<sup>nd</sup> Defendant and instead she proceeded to fix the matter for a considered Ruling on 16<sup>th</sup> February 2018.

11. It would appear however that the Ruling was not ready on the given date and the record does not indicate what happened until 27<sup>th</sup> April 2018 when Ruling was delivered in Chambers in the absence of the parties.

12. In the absence of any evidence that the Plaintiff/Applicant was given notice of the proceedings of 27<sup>th</sup> April 2018, I am unable to see how he could be faulted for not applying for the reasons for the Taxing Master's decision within the stipulated time.

13. Thus while it may be true that the Bill was eventually taxed as drawn and that the Plaintiff had not opposed the same, it is my view that the Rules of Procedure demanded that he be given notice of the date of delivery of the Ruling to enable him decide his next course of action.

14. In the circumstances, I find merit in the Plaintiff's application and hereby grant him 14 days within which to file objection proceedings.

15. The costs of this application shall be in the cause.

**Dated, signed and delivered at Malindi this 20<sup>th</sup> day of September, 2019.**

J.O. OLOLA

JUDGE