



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISCELLANOUS ELC APPLICATION NO. 49 OF 2018

MWAGAMBO & OKONJO ADVOCATES.....APPLICANT

VERSUS

MINISTER FOR PUBLIC WORKS, ROADS AND

TRANSPORT, COUNTY GOVERNMENT OF KAJIADO.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF KAJIADO.....2ND RESPONDENT

RULING

What is before Court for determination is the Applicant's Chamber Summons dated the 29th August, 2018 and filed in court on 6th September, 2018 brought pursuant to Rule 11(4) of the Advocates (Remuneration) Order; Section 48(3) & 51 of the Advocates Act; Section 3A of the Civil Procedure Act.

The Applicant seeks the following prayers:

1. This Honourable Court be pleased to enlarge time for the Applicant to give notice in writing to the Deputy Registrar of the items to which it objects to in the Ruling delivered on 16th July, 2018, in Miscellaneous ELC Cause No. 14 of 2018, in his capacity as a Taxing Master;
2. This Honourable Court be pleased to grant leave to the Applicant to appeal out of time against the Ruling delivered by the Deputy Registrar on 16th July, 2018, in Miscellaneous ELC Cause No. 14 of 2018, in his capacity as a Taxing Master; and
3. The Costs of this Application be provided for.

The Application is premised on the summarized grounds that the Applicant was unaware of the date the Ruling was delivered by the Taxing Master. The cause of delay and failure in giving notice in writing to the Deputy Registrar in his capacity as the taxing master of the items objected to, was occasioned by an administrative oversight. The Application has been made without undue or unreasonable delay and the intended Appeal has arguable issues. The Respondents do not stand to suffer any prejudice if the orders sought are granted.

The Application is supported by the affidavit of EMMANUEL MWAGAMBO MWAGONAH who is the Managing partner to the Applicant where he avers that they filed their Bill of Costs in the matter of Mwagambo & Okonjo Advocates V Minister for Public Works, Roads and Transport, County Government of Kajiado and the County Government of Kajiado Miscellaneous ELC Cause No. 14 of 2018 dated the 28th March 2018 and filed in Court on 29th March, 2019. He confirms that the Deputy Registrar as the Taxing Master rendered his ruling on the Applicant's Advocate – Client Bill of Costs dated 28th March, 2018 on 16th July, 2018. Further, that the Applicant opted to file an objection to the Taxing Master to provide written reasons for his original Ruling on certain identified items. He explains that the Applicant intends to appeal against the aforementioned Ruling by the Deputy Registrar and seeks enlargement of time to do so. He reiterates that the Applicant has an arguable appeal as the Taxing Master misdirected himself on the nature and extent of the pecuniary interest and cumulative damages of Kshs. 10 million thereby awarding a considerably low and erroneous instruction fee. Further, the Taxing Master misdirected himself on the labour and the responsibility entailed in preparation of the pleadings thereby awarding low instruction fees. He reiterates that the Taxing Master's decision was based on an error of principle and the fees awarded was manifestly low.

Both the Applicant and the Respondent filed their respective submissions that I have considered.

Analysis and Determination

Upon perusal of the Chamber Summons dated the 29th August, 2018 including the supporting affidavit as well as the submissions filed

herein, the only issue for determination is whether the Court should enlarge time to enable the Applicant to give notice to the Deputy Registrar on its objections to the Ruling delivered on 16th July, 2018 as well as lodge an Appeal against the said Ruling.

The Applicant seeks to Appeal against the Ruling of the Deputy Registrar dated the 16th July, 2018 and claims it was not aware the same had been delivered. It disputes certain amounts awarded by the Deputy Registrar as the Taxing Master. It has filed submissions and relied on the cases of **Peter Julius Njoroge V Fidelity Commercial Bank Limited & Another (2018) eKLR** and **Mumias Sugar Company Limited V Tom Ojienda & Associates (2019) eKLR** to buttress its arguments. The Respondent opposed the Application and submitted that the amount sought by the Applicant is manifestly excessive. Further, that the prayers sought by the Applicant is a waste of the Court's time as there was no error apparent on the face of the said Ruling to warrant any interference by the Court. It relied on the cases of **Premchand raich and Limited Versus Quarry Services of East Africa Limited (1972) EA 162**; **Joreth Limited V Kigano and Associates (2002) EA 92**; and **Republic Versus Minister for Agriculture & 2 others ex parte Samuel Muchiri W/ Njuguna & 6 others (20060 eKLR** to support its arguments.

Clause 11 of the Advocates Remuneration Order stipulates that: ‘

‘(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) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.’

In the current scenario, the Applicant has lodged an application to enlarge time after 53 days. It was the Applicant's contention that it was not aware of the date of the Ruling as no notice was issued by the Taxing Master. These averments are not controverted by the Respondent. The Applicant insists it has an arguable Appeal as it is challenging certain awards from the Taxing Master. The above cited legal provisions give the Court the discretion to enlarge time. In the case of **Peter Julius Njoroge V Fidelity Commercial Bank Limited & Another (2018) eKLR**, the Court found a delay of 45 days not inordinate and allowed an application for enlargement of time. In the instant case, I note that the Applicant was not notified of the date of the Ruling in respect of the taxation. To my mind this is a good reason enough for failing to lodge an objection within 14 days of the ruling. Since the Respondent did not file an affidavit to controvert the Applicant's averments and in associating myself with the above cited case as well as the legal provisions cited above, I will excuse the delay as it was not inordinate and proceed to allow the instant application. I direct the Applicant to lodge an objection as well as an Appeal within 14days from the date hereof.

Costs will be in the cause

Dated signed and delivered in open court at Kajiado this 18th day of September, 2019.

CHRISTINE OCHIENG

JUDGE