



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.62 OF 2014

1. HAGGAI O. TAMBO
2. LUCY I. A. ATIENO
3. CHRISTINE ATIENO
4. MILDRED ACHIENG
5. SARA JANET A. MZINGO.....PLAINTIFFS/APPLICANTS

=VERSUS=

1. KESREC AGENCY LIMITED
2. KAHLID BADI SWEDI
3. MOHAMED ALI ALLAUSI
4. HALIMA HUSSEIN AHMED
5. ARBI MUSANI.....DEFENDANTS/RESPONDENTS

R U L I N G

1. What is before me is the Application by the Plaintiff dated 20th April, 2015 seeking for the following orders:
 - (a) That there be a stay of execution pending filing and hearing and determination of the Applicants' reference to the Taxation.
 - (b) That leave be granted to the Applicants to file and serve their reference to the taxation out of time.
2. The Application is supported by the Affidavit of the Plaintiff's advocate who has deponed that the

- Ruling in respect of the Bill of Costs was to be delivered on 12th March 2015; that the Ruling was never delivered on the said date; that on 7th April 2015, he was served with a certificate of costs and that by that time, the 14 days allowed to file a Reference had lapsed.
3. It is the Applicant's advocate's deposition that the delay in filing the Reference was not occasioned by the Applicants.
 4. The Respondent's counsel deponed that it is true that the Ruling in respect to the Bill of Costs was not delivered on 12th March 2015 as earlier scheduled; that the Court Clerk advised counsels that the Ruling would be delivered on 17th March 2015 on which day the Plaintiff's Advocate was absent; that the Applicants have not shown any reason as to why they did not attend court on 17th March, 2015 and that all parties who were in court on 12th March 2015 were informed that the Ruling was to be delivered on 17th March 2015.
 5. It is the Respondents' case that the delay by the Applicants to file the reference is inordinate and inexcusable.
 6. The advocates filed their respective submissions in which they reiterated the depositions in their affidavits. I have considered the said submissions.
 7. I have perused the record and it shows that the taxing officer reserved her Ruling in respect to the Bill of Costs for 12th March 2015. However, the Ruling was not delivered until 17th March 2015 in the absence of the Applicants' counsel.
 8. According to the Plaintiffs' advocate, he only learnt about the Ruling of 17th March, 2015 when the Certificate of Taxation dated 20th March 2015 was served on him on 7th April 2015, by which time the time for filing a reference had lapsed.
 9. I have looked at the record and there is no indication to show that the date of the Ruling was changed from 12th March to 17th March 2015.
 10. However, the Plaintiffs' advocate has acknowledged that he became aware of the Ruling on 7th April 2015.
 11. Rule 11 (1), (2) and (4) of the Advocates (Remuneration) Order states as follows:

“11(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.

11(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

11(3)

11(4) The High Court shall have power in its discretion by order to enlarge the time fixed by sub paragraph (1) or sub-paragraph (2), for the taking of any step.....”

12. The above provisions of the law shows that a party objecting to the decision of the taxing officer must first give a notice in writing to the taxing officer of the items to which he objects. Such notice is supposed to be given within 14 days.
13. It is only after the Taxing Officer has responded to the objector's notice by giving reasons for his decision on the items to which the objector objects that the objector can file a reference in respect to the items of taxation he objects to. The High court has a discretion to enlarge time within which the notice to the taxing officer should be made and the time within which the Reference should be filed.
14. The Applicants have never given a notice to the taxing officer informing her the items of taxation to which they object. Indeed, it is not clear if the objection by the Applicants is in respect to each of the items in the Bill of Costs or not.

15. Considering that by the time the Applicants learnt of the Ruling of the Taxing Officer 14 days had lapsed, the Application that should have been filed is for an order to enlarge time to give notice to the taxing officer of the items of taxation to which they object, and if leave is granted, wait for the reasons of the decision. It is only after obtaining the reasons that the Applicants would file a Reference, or an Application to file a Reference out of time.
16. The current Application by the Applicants is seeking for the enlargement of time to file and serve a reference out of time before informing the taxing officer the items they object to.
17. Such an order cannot be granted for want of notice to the taxing officer, which is a pre-requisite to the filing of a reference or an Application to file a reference out of time.
18. The failure by the Applicants to comply with the provisions of Order 11 of the Advocates (Remuneration) Order renders the Application dated 18th June, 2015 incompetent. The Application dated 18th June 2015 is therefore dismissed with costs.

Dated and delivered in Malindi this 23rd day of October 2015.

O. A. Angote

Judge