



Muturi Mwangi & Associates v Mwangi (Environment and Land Miscellaneous Application E163 of 2021) [2024] KEELC 1604 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1604 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E163 OF 2021
OA ANGOTE, J
MARCH 14, 2024

BETWEEN

MUTURI MWANGI & ASSOCIATES APPLICANT

AND

HELLEN WANJIRU MWANGI RESPONDENT

RULING

1. The Applicant has filed a Chamber Summons application under Rule 11(4) of the [Advocates Remuneration Order](#) 2014 dated 2nd November 2022, seeking the following orders:
 - a. Spent
 - b. That this Honourable court be pleased to enlarge the time within which to file a reference against the decision of the taxing officer delivered on 22nd August 2022 with respect to the Applicant's Bill of Costs dated 24th August 2021.
 - c. That the draft reference attached herewith be deemed as properly filed subject to payment of the requisite court fees.
 - d. That the costs of this Application be in the Cause.
2. This application is based on the grounds that the learned Deputy Registrar delivered a ruling with respect to the Applicant's Bill of Costs dated 24th August 2021 on 22nd August 2022, awarding the Applicant Kshs. 1,275,929.06/- as taxed costs, despite the applicant having proposed Kshs. 34,147,100.
3. Vide a letter dated 29th August 2022, the Applicant notified the Deputy Registrar of its intent to file a reference and sought reasons for the Deputy Registrar's reasons for taxation.
4. The Applicant deponed that his advocates received a letter on 6th October 2022 from the Deputy Registrar dated 3rd October 2022, advising that the reason for her decision is in the body of the ruling;



- that they thereafter promptly applied for the requisite certificate of taxation, which certificate was received on 25th October 2022 and that it is the delay in the issuance of the certificate of taxation that has delayed the filing of the reference, hence this application for extension of time.
5. The Applicant deponed that it has prepared a Chamber Summons reference application seeking for orders that:-
 - a. This Honourable court be pleased to set aside the learned Deputy Registrar/ Taxing Master's decision delivered on 22nd August 2022 with respect to the Applicant's Bill of Costs dated 24th August 2021.
 - b. This Honourable court be pleased to reassess the fees due and find that the fees due to the Applicant in the taxation cause is as presented in the Advocate/ Applicant's Bill of Costs dated 24th August 2021 and the submissions filed in support thereto.
 - c. That the costs of the Application be in the cause.
 6. According to the Applicant, the failure to file the reference within time was caused by administrative procedures at the court's registry, which were beyond his control and should not be visited upon him and that the Applicant was indisposed and was unavailable to execute the Affidavit in support of the reference application, despite it being promptly forwarded to him.
 7. The Applicant assert that the delay in filing the application is excusable; that the reference is arguable and has chances of success and that no prejudice shall be visited upon the Respondent if the orders sought are granted.
 8. The Respondent opposed the application vide a Replying Affidavit dated 27th January 2023. She deponed that the application is an afterthought as the taxed amount has long been paid and acknowledged vide the letter dated 17th October 2022 and that the Applicant did not indicate that he was indisposed or unwell.
 9. According to the Respondent, the Applicant has not demonstrated that its reference conformed to Rule 11(1) of the Advocates Remuneration Order, which provides for itemized items to which the applicant could object; that the Applicant has not followed the proper steps in filing the reference and that the discretion to extend time is only available to a deserving applicant depending on the circumstances and reasonable grounds adduced.
 10. The Respondent lastly deponed that the Applicant has failed to explain the delay, and has not demonstrated that the intended reference has merit as the objects objected to are missing and there is no draft reference exhibited.
 11. The Applicant, in its Further Affidavit dated 2nd March attached a draft Reference Application for the Court's consideration, which points to the issues for the reference, being the instruction fees awarded by the Taxing Officer and that the Taxing Officer did not exercise her discretion in determining the value of the subject matter judiciously.
 12. Both parties filed written submissions and authorities which I have considered.

Analysis and Determination

13. The application before this court has sought that this court enlarges the time within which to file a reference against the decision of the Taxing Officer delivered on 22nd August 2022 with respect to the Applicant's Bill of Costs dated 24th August 2021. The only issue for this court's determination is:



- a. Whether the court should allow the Applicant to file a reference out of time.
14. The procedure for filing a reference to oppose a taxed bill of costs is set out in Paragraph 11 (1) and (2) of the [Advocates Remuneration Order](#). It 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.”
15. This application has been made pursuant to Paragraph 11(4) of the [Advocates Remuneration Order](#), which grants this court the discretionary power to enlarge the time for filing a reference. It states as follows:
- “(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.”
16. Paragraph 11(4) of the [Advocates Remuneration order](#) does not stipulate the relevant factors that a court should take into account in exercising such discretion. The Supreme Court has all the same, had an opportunity to pronounce itself on this matter, on a set of principles in permitting or withholding discretion on an application of this nature.
17. In the case of [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others](#) [2014] eKLR, the Supreme Court stated as follows:
- “Discretion to extend time is indeed unfettered but its incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were extenuating circumstances that could enable the Court to exercise discretion in favour of the applicant. In doing so the following principles are applicable thus:
- (i). Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party.
- (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 ought to exercise 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, which ought to be explained to the satisfaction of the Court.
- (v). Whether there would be any prejudice suffered, the respondent if the extension was granted.



- (vi). Whether, the application had been brought without undue delay and
- (vii). Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”

18. Similarly, the Court of Appeal in *Paul Wanjobi Mathenge v Duncan Gichane Mathenge* [2013] eKLR observed as follows :-

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi V Charles Gichina Mwangi – Civil Application No. Nai 26 of 2004*, this Court held: -

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi V Kenya Airways Ltd [2003] KLR 486* in which this Court stated;-

“Over the years, the Court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi – Civil Application No Nai 255 of 1997*(unreported), the Court expressed itself thus; -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reasons for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

- 19. This court is bound by the above decisions. The facts in this case are that the Taxing Officer delivered a ruling dated 22nd August 2022 with respect to the Applicant’s Bill of Costs dated 24th August 2021. The Applicant thereafter wrote a letter to the Registrar dated 29th August 2022 seeking reasons for taxation.
- 20. The Deputy Registrar responded by way of a letter dated 3rd October 2022, and received on 6th October 2022, stating that the reasons for her decision is contained in the ruling. The Certificate of Taxation was issued on 25th October 2022 while this application was filed on 2nd November 2022.
- 21. The timelines stipulated in the Advocates Remuneration Order are that a party seeking to object to a decision should, within fourteen days of such decision, give notice in writing to the Taxing Officer of the items of taxation to which he objects. The Taxing Officer should thereafter forward the reasons for her decision with respect to those items. Within fourteen days of receiving the reasons, the objector should file a Chamber Summons setting out the grounds of his objection.
- 22. In this case, the Applicant received the Taxing Officer’s response on 6th October 2022, in which she indicated that the reasons for her decision are in the ruling. The Applicant therefore ought to have filed a reference by 20th October 2022. The computation of the delay in this suit, between the receipt



of the Deputy Registrar's decision and the filing of this application on 2nd November 2022, is thirteen (13) days.

23. The Applicant has averred that the delay in filing the reference has been occasioned by administrative delays and the fact that the Applicant was indisposed and was unavailable to execute the Affidavit in support for the reference application. Indeed, the Applicant was only able to obtain the Certificate of Taxation on 25th October 2022.
24. The further delay attributed to the Applicant's ill health is reasonable. The Applicant has satisfactorily explained the delay in filing the reference.
25. With respect to the merits of the proposed reference, the Applicant's appeal is based on the Taxing Officer's exercise of discretion in calculating the instruction fees based on the agreement of sale entered into in 1976, and not the value indicated in the valuation report availed by the Applicant. The proposed reference is therefore not frivolous.
26. The court is satisfied that the Applicant has adduced good reasons for the delay in filing the reference. For those reasons, the application dated 2nd November 2022 is allowed as follows:
 - a. An order be and is hereby granted enlarging the time within which to file a reference against the decision of the taxing officer delivered on 22nd August 2022 with respect to the Applicant's Bill of Costs dated 24th August 2021.
 - b. The reference to be filed and served within 14 days.
 - c. Each party to bear his own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 14TH DAY OF MARCH, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Masiya for Respondent

Mr. Nthei for Applicant

Court Assistant - Tracy

