



**Republic v Land Adjudication Officer, Bondo, Siaya and Busia & 2 others; Lawi & another
(Exparte Applicants); Gilo (Interested Party) (Environment and Land Miscellaneous.
(Reference) Application 1 of 2023) [2024] KEELC 4386 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4386 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS.(REFERENCE) APPLICATION 1 OF 2023
AY KOROSS, J
MAY 30, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**THE LAND ADJUDICATION OFFICER, BONDO, SIAYA AND
BUSIA 1ST RESPONDENT**

DIRECTOR OF LAND ADJUDICATION 2ND RESPONDENT

**DEPUTY COUNTY COMMISSIONER BONDO SUB COUNTY 3RD
RESPONDENT**

AND

JAMES ODHIAMBO LAWI EXPARTE APPLICANT

DENNIS AWANA LAWI EXPARTE APPLICANT

AND

JARED GILO INTERESTED PARTY

RULING

(Being an application against the ruling of Hon. Lester Simiyu delivered on 4/10/2023 in ELC JR E003 of 2021)

1. Before this court for determination is the chamber summons dated 2/11/2023 that has been filed by the ex parte applicants. They express to have moved this court in terms of Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules*, and Rules 11 (2) and 13



of the *Advocates (Remuneration) Order*. Some of the reliefs are spent and the outstanding reliefs for determination are: -

- a. The court does enlarge time and allow the ex parte applicants to file a reference.
 - b. The ex parte applicants be granted leave to file an objection and a taxation reference to this court against the ruling of the taxation master rendered on 4/10/2023.
 - c. That the leave granted by prayer (b) above operates as a stay of execution of the ruling of the taxing master and any other consequential proceedings.
 - d. The taxation master's ruling rendered on 4/10/2023 on the interested party's bill of costs dated 10/1/2023, awarded quantum, and reasons for the award be set aside.
 - e. The bill of costs dated 10/1/2023 be re-taxed by the court or in the alternative, it be remitted for re-taxation before a different taxation master.
2. The application is based on grounds set on the face of the summons and on the supporting affidavit of William James Odhiambo Lawi which he deposed on 2/11/2023.
 3. In brief, it is his position the bill as taxed is manifestly high and this court has jurisdiction to re-assess it, the impugned ruling departed from the law as the instruction fees were taxed on an inappropriate scale, items 1, 2,3, 7, and 23 of the bill of costs were taxed at manifestly high amounts, the taxing master was biased against the ex parte applicants and the taxing master erred in principle by not considering the nature of the case, amount involved and general conduct of the proceedings.

Interested party's case

4. The summons is strenuously opposed by the replying affidavit of the interested party's counsel Mr. Jude Ragot which he deposed on 15/11/2023.
5. In summary, counsel avers the summons is misconceived, frivolous, fatally defective, and an abuse of court process as the ex parte applicants had failed to comply with Rule 11 (1) of the *Advocates (Remuneration) Order*. Further, counsel states the letter delivered to the court on 24/10/2023 in purported compliance with the said Rule 11 (1) was filed 6 days outside prescribed timelines.
6. In addition, counsel asserts the ex parte applicants had failed to tender cogent and plausible reasons for the delay and the letter dated 23/10/2023 fell far short of the requirements of the law as it failed to disclose the items the ex parte applicants were aggrieved against.
7. Apart from the ex-parte applicants and interested party, no other party participated in these proceedings. As directed by the court, the summons is canvassed by written submissions.

*****Ex parte* __ applicants' submissions**

8. By the law firm of M/s. Mwamu & Co. Advocates, their submissions were filed on 25/01/2024 and counsel identified the issues for determination as to whether the prayers sought should be granted and the costs of the summons.
9. On the prayer for the enlargement of time, counsel submits that though Rule 11 (1) and (2) of *Advocates (Remuneration) Order* is silent on factors a court considers in enlarging time, this court has wide discretionary powers envisaged by Sections 1A, 1B, 3A, and 79G of the *Civil Procedure Act* and in the interests of justice and sufficient cause, could extend time. Counsel urges this court to rely on



the case of *Leo Sila Mutiso V. Rose Hellen Wangari Mwangi* - Civil Application No. NAI 255 of 1997 (unreported) which stated: -

“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 the 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 reason for the 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.”

10. Counsel submits that time started to run 14 days from 2/11/2023 which was when the ex parte applicants sought for reasons and on this, relies on the case of *Nyakundi & Company Advocates v Kenyatta National Hospital Board* [2005] eKLR which decision delved into the provisions of Rule 11 (2) of the *Advocates (Remuneration) Order*.
11. On the relief of stay of execution, counsel submits this is anchored on Order 46 Rule 6 of the *Civil Procedure Rules* and relies on the well-cited decision of *RWW v EKW* [2019] eKLR where the court stated that the court has to balance the interests of the disputants. Counsel submits if execution proceeds, the summons would be rendered nugatory.
12. On the prayer seeking to set aside the impugned decision, counsel relies on several authorities and submits the principles were settled in the case of *Premchand Raichand Limited & another v. Quarry Services of East Africa Limited and another* (1972) E.A 162.
13. On the alternate relief of referring the matter for re-taxation, counsel submits that if the court finds the bill of costs was taxed manifestly high, then, it should be remitted back to a different taxing officer for re-taxation of items 1, 2, 3 and 7 of the bill of costs and on costs, counsel argues that each party should bear their respective costs.

Interested party's submissions

14. The law firm of M/s. Owiti, Otieno & Ragot Advocates filed written submissions dated 28/02/2024 which were on the prayers sought by the ex parte applicants.
15. On the 1st relief, counsel submits the procedure for filing a reference is provided for in Rule 11 of the *Advocates (Remuneration) Order* and one of the requirements is a notice of objection which ought to have contained items aggrieved against and it should seek reasons for arriving at such a decision and that such notice must be made 14 days from the date of the taxing master's decision. Further, counsel submits challenge has to be made within 14 days of the date of the decision.
16. Counsel submits if a party fails to adhere to timelines contemplated by Rule 11 (1) and (2) of the *Advocates (Remuneration) Order*, then they can seek leave from a superior court as they have done herein. This notwithstanding, counsel submits such leave is not as of right and judicious discretion has to be exercised and relies on the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR where the apex court stated: -

“Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.”



17. On the other reliefs, counsel submits the impugned ruling was well reasoned and there are no justifiable grounds that had been advanced to warrant setting aside the taxing master's decision on items 1, 2, 3, 7, and 23. Further, counsel submits the ex parte applicants' arguments that the taxation on these items was manifestly high could not suffice. On the principles for setting aside a taxing masters' decision, counsel also relies on Premchand Raichand Limited (Supra).

Issues for determination, Analysis, and Determination

18. Having carefully given thought to the summons, its grounds, affidavits, rival submissions, and provisions of law, the issues that arise for resolution and shall be addressed serially are: -
- a. Whether an extension of time should be granted.
 - b. Whether the ex parte applicants have met the threshold to warrant a grant of stay of execution.
 - c. Whether the ex parte applicants have made a case to warrant disturbance of the taxing master's decision.
 - d. What orders should this court issue including an order as to costs?
19. This court notes that counsels did not bother to avail the authorities they relied upon to sustain their arguments and on that basis, this court will not consider them.

Whether an extension of time should be granted.

20. Both counsels erroneously referred to the provisions of the *Advocates (Remuneration) Order* as Rules as opposed to Paragraphs. The descriptor of this Paragraph is found in the header of the *Advocates (Remuneration) Order* whereby it stipulates the provisions therein as "The *Advocates (Remuneration) Order* arrangement of Paragraphs".
21. Nonetheless, the provision of law that deals with the procedure for objection to the decision of a taxing officer, an appeal against the decision, and an extension of time is found in Paragraph 11 (1) (2) (3) and (4) of the *Advocates (Remuneration) Order* which postulates: -
- "(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) far (sic) 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.” Emphasis added.

22. It is evident in arguing that the ex parte applicants did not need to object within 14 days after the impugned decision was rendered, the ex parte applicant’s counsel overlooked Paragraph 11 (1) of the *Advocates (Remuneration) Order*. Suffice to say, it is entirely on the basis that they filed their objection late that they are now seeking an extension of time. It is noted they complied with Paragraph 11 (2) thereof as they filed the instant summons within 14 days after reasons were given to them.
23. The impugned decision was rendered by the taxing officer on 4/10/2023 and the latest date the ex parte applicants could lodge their notice of objection on items aggrieved against was Wednesday 18/10/2024. However, they filed it on 24/10/2024 which was 6 days out of time, and worse, it did not make disclosures on the taxed items that they were dissatisfied against.
24. Be that as it may, Paragraph 11(4) of the *Advocates (Remuneration) Order* grants this court discretion to extend the time for objecting even if the 14 days prescribed for the objection of the decision of the taxing master has expired.
25. Notwithstanding Paragraph 11(4) is silent on the criterion upon which the court can exercise discretion, this court is called to exercise judicious discretion anchored on reason, material, and evidence placed before it.
26. The principles that guide this court when faced with a prayer for an extension of time to object to the decision of a taxing master have been dealt with in a line of court decisions notably the decision of the Supreme Court of Kenya of *Non- Governmental Organizations Coordination Board v EG & 5 others* (Petition (Application) 16 of 2019) [2023] KESC 78 (KLR) (22 September 2023) (Ruling) and *Leo Sila Mutiso* (Supra) that was cited with approval by the Court of Appeal decision of *Stanley Kaiyongi Mwenda v Cyprian Kubai*[2000] eKLR.
27. In *Non- Governmental Organizations Coordination Board* (Supra), the apex court summarized the principles thus: -

“The guiding principles in considering an application for extension of time were:

- a. extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
- b. a party who sought for extension of time had the burden of laying a basis to the satisfaction of the court;
- c. whether the court should exercise the discretion to extend time, was a consideration to be made on a case-to-case basis;
- d. whether there was a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. whether there would be any prejudice suffered by the respondents if the extension was granted;
- f. whether the application had been brought without undue delay; and
- g. whether in certain cases, like election petitions, public interest should be a consideration for extending time.”



28. Since the circumstances of each case are unique as even a singular day could be tantamount to delay, each case has to be considered on its set of conditions. Since none of the parties have questioned if the summons was filed timeously and considering the summons was filed close to 2 months after the impugned decision was rendered, I am satisfied the ex parte applicants are not guilty of undue delay.
29. However, from the summons, the ex-parte applicants did not advance any reasons for the delay and it appears they were of the mistaken belief that it was a matter of right. Nay, the burden was upon them to demonstrate by way of evidence, plausible and satisfactory reasons for the delay.
30. In the absence of a singular ground for the delay, I must conclude, find, and hold the ex-parte applicants have not met the ingredients to warrant enlarging the time for them to file a reference against the ruling of the taxing master. This finding renders the determination of issues (b) and (c) unnecessary whilst on issue (d), the summons is hereby dismissed with costs.
31. Ultimately, this court hereby issues the following disposal order: -
- a. The chamber summons dated 2/11/2023 is dismissed with costs to the interested party.

Orders accordingly.

Delivered and Dated at Siaya this 30th Day of May 2024.

HON. A. Y. KOROSS

JUDGE

30/5/2024

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:k

N/A for the applicant

