



**Ngelechei & another v Singoei (Environment & Land Case
87 of 2021) [2024] KEELC 4146 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4146 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 87 OF 2021**

MN MWANYALE, J

MAY 16, 2024

BETWEEN

KIBUTUK NGELECHEI 1ST PLAINTIFF

ANNA JEROP RONGOEI 2ND PLAINTIFF

AND

PHILEMON SINGOEI DEFENDANT

RULING

1. This Ruling is in respect of the application dated 6/7/2023 which seeks orders as follows; -
 - a. Spent
 - b. That the Court be pleased to grant leave and extension of time for the Applicant to file a notice against the taxing masters ruling on costs in this proceeding.
2. Directions were issued on 25/7/2023 where the Applicant was to file submissions within 7 days and was to file alongside the said submissions a further affidavit if they deemed necessary while the Respondent was to file submissions within 7 days of service, and an interim stay of execution was issued pending delivery of ruling.
3. The matter was slated for mention on 17/8/2023 to confirm compliance when the Court had proceeded for the August Recess but the same was mentioned before the Deputy Registrar who issued another mention date, and a series of mention dates before the Deputy Registrar until the matter was brought before me on 6/5/2024 and upon confirmation that both parties had filed their respective submissions, I reserved the ruling for today, consequently there was a delay in the determination of the application dated 6/7/2023 whose ruling is being delivered almost 10 months after it was filed which the Court highly regrets.



4. The gravamen of the application is that Applicant was not informed of the ruling of the taxation until he was served with the Notice to show cause. Having not been aware of the ruling, the Applicant was not able to challenge the same timely hence the instant application.
5. That the taxed costs are extremely exaggerated and if anything, the Applicant did not give instructions to the institution of the suit and neither did he participate in the proceedings.
6. That the delay in the filing of the Notice was occasioned by the failure of the Respondent to serve the Applicant with a taxation notice.
7. In opposition to the application is a replying affidavit deponed by Philemon Singoei who deposes;
 - i. knowledge of service of a Bill of costs dated 23/3/2022 upon the Applicant's Advocates, and that a notice of taxation was served upon the Applicants Advocates requiring the attendance for taxation on 19th July 2022, where matter was listed for mention for submissions on 30/8/2022 and the Applicant did not file submissions and the ruling on the Bill of Costs was delivered on 27/10/2022.
 - ii. Thus, the Applicant was aware of the proceedings before the taxing officer and ought not to benefit from the discretion under Rules 11 (4) of the Advocates Remuneration Order (ARO).
 - iii. That the application is thus an abuse of the Court process and waste of valuable judicial time as the Applicant was served with the Notice of Taxation but failed to file submissions to the Bill of Costs.
 - iv. That the application is totally defective as it does not confirm to provision of Rule 11 (1)(2)(3) of the Advocates Renumeration Order that the warrants of arrest were issued lawfully because the Applicant failed to appear in Court and failed to pay the taxed party and party costs.
8. Parties filed submissions, and the
 - i. Applicant submits placing reliance on the decision in Josephine Wambui Gitbinji v Peter Gachenga Kimuhu & 2 others which decision quotes the principles for extension of time as spell out by the Court of Appeal in Leosilla Mutiso v Rose Hellen Wangari Mwangi (199) E. A. 231, where the Court 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 the Court takes into account in deciding whether to grant an extension of time are first, the lengthy of he delays. Secondly, the reason for the delay, thirdly 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."
 - ii. The Applicant cites regulation 11 (1) as allowing a party to object to the decision of he taxing master within 14 days after the decision gives notice in writing to the taxing officer of the items of taxation to which he objects.
 - iii. The Applicant placing reliance on paragraph 11 (3) of the ARO submits that the Court has discretion to extend time and places reliance in the decision in the case of Re Estate of Mutetema Itumo.
 - iv. Lastly the Applicant submits that they be given a chance to be heard for the interests of justice to be served.
9. In response the Respondent has framed and submitted on two issues for determination; to wit,



- i. Whether the Court should enlarge time to enable the Applicant to file a notice against the taxing masters ruling on costs
 - ii. Whether execution be stayed.
10. The Respondent has reproduced the provision of paragraph 11 (1) (2) (3) and (4) of the Advocates Remuneration Order ([ARO](#)) and submits that the same is the applicable law.
11. On discretion the Respondent places reliance on the decision in the case of [County Executive of Kisumu v the County Government of Kisumu and 8 others](#) (2017) eKLR, where the supreme Court quoted its decision in the Nicholas Salat case and set to the principles for extension of time as follows; -
 - i. “The underlying principles that a Court should consider in exercise of such discretion; Extension of time is not a right of a party, it is an equitable, remedy that is only available to a deserving party at the discretion of the Court.
 - 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 should exercise the discretion to extend time, is a consideration to be made on a case ot case basis
 - iv. Whether there is a reasonable reason delay for the delay. The delay should be explained to the satisfaction of the Court.
 - v. Whether there is any prejudice by the Respondents if the extension is granted
 - vi. Whether the application has been brought without undue delay”.
12. The Respondents submits that the Applicant was aware of the proceedings to the point of delivery of the Ruling on the taxation on 27/10/2022.
13. The Respondent submits placing reliance on the decision in [Nyakundi & Company Advocates v Kenyatta National Hospital Board](#) 2005 eKLR.
14. The Respondent further places reliance on the decision in the case in [George M. Gachimu & 2 others](#). That the reasons must be plausible and that no plausible reason has been advanced by the Applicant.
15. The Respondent submits this that the Applicant has not made out a case for grant of extension of time.
16. On issue number 2, the Respondent submits that the Applicant has not met the threshold for grant of stay of execution under order 42 rule 6 (2) of the [Civil Procedure Rules](#).
17. The Respondent thus submits the application is unmerited and should be dismissed with costs.
18. Before framing issues for determination, the Court notes the undisputed facts as follows; that;
 - i. A ruling on the taxation was delivered on 27/10/2022 in the absence of the parties
 - ii. The Applicant got aware of the Ruling sometimes in May 2023, when he was served with a NTSC.
 - iii. The present application was filed on 6th July 2023.



Issues for determination: -

19. Having analyzed the application before Court, the affidavits and the submissions by the parties, the Court frames the sole issue the Court shall have regard as to whether the application meets the threshold for extension of time, and for stay of execution.
20. Both parties agree on the principles the Court considers for extension of time, the Applicant having cited the decision in *Leo Silla Mutiso*, while the Respondent has cited the decision in the [*Nick Salat case*](#).
21. The principles set out in the above decisions mirror each other and the Supreme Court's decision in the [*Nick Salat's case*](#) is authoritative on this point.
22. This taxing master decision was delivered on 27/10/2022 in the absence of the parties.
23. The Applicant had 14 days to challenge the said decision by pointing the items he contested.
24. The Applicant became aware of the decision in May 2023, and filed the present application in July 2023. The Applicant explains the reason for the delay, in two-fold firstly as not having been served with the notice of taxation and secondly not having been aware of the Ruling, the same having been delivered in absence of parties.
25. The record shows that the Applicant through his Advocate participated in the taxation proceedings but did not file submissions; hence the first reason is an outright hoodwink.
26. On the second reason, the record shows that the Ruling was delivered in absence of the parties, true, but the Applicant become aware of the Ruling in May 2023 upon being served with the NTSC. The period between May 2023 and July 2023 when the application was filed has not been explained by the Applicant.
27. On the remaining principles, the application was not filed timeously as it ought to have been filed immediately upon the Applicant having known of the existence of the Ruling on the taxation in May 2023.
28. The application submits that ought not be condemned unheard, yet while represented before the Deputy Registrar he did not file submissions in opposition to the Bill of Costs.
29. The reasons advanced for the notice to challenge the taxations are that the Bill of Costs is exaggerated without pointing to the items he intends to challenge and another reason that he did not instruct the filing of the plaint not took part in the proceedings are in my view not sufficient reasons to succeed in the notice of challenging the certificate of costs.
30. For the reasons advanced, I find that the application has not met the threshold for extension of time and for the Court to exercise its discretion in favour of the Applicant.
31. On whether the application meets the threshold of grant of stay of execution; the Court finds the same does not meet the conditions set out in Order 42 Rule 6. The application was not made timeously, and no security was offered by the Applicant.
32. The upshot is that the application is not merited and the same is hereby dismissed, any interim orders that had been issued are discharged.
33. Orders accordingly.

Ruling, Delivered and Dated at Kapsabet this 16th day of May, 2024.



Hon. M. N. Mwanyale,

JUDGE

In the presence of; -

Mr. Korir for Plaintiff/Applicant

Mr. Kinyanjui holding brief for Mr. Murgor for the Respondent

