



**Musyoka Murumbi & Associates v Concord Savings and Credit Co-operative Society
(Miscellaneous Case E203 of 2021) [2024] KEELRC 13427 (KLR) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13427 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS CASE E203 OF 2021**

**K OCHARO, J
DECEMBER 13, 2024**

BETWEEN

MUSYOKA MURUMBI & ASSOCIATES APPLICANT

AND

**CONCORD SAVINGS AND CREDIT CO-OPERATIVE
SOCIETY RESPONDENT**

RULING

Background

1. By a Notice of Motion dated 5th October 2022 expressed to under paragraph 11 of the [Advocates \[Remuneration\] Rules](#) and Order 42 Rule 6 the [Civil Procedure Rules](#) 2010, the Applicant seeks the following orders:
 - a. That the application be heard exparte in the first instance due to its urgency.
 - b. That there be an interim order for stay of execution of the Certificate of Costs issued in this Cause pending the hearing and determination of this application.
 - c. That there be a stay of execution of the Certificate of Costs issued in this Cause pending the hearing and determination of the Reference herein.
 - d. That this Honourable Court do extend time for filing the reference between the parties hereto.
 - e. That this Honourable Court be pleased to treat or convert this application into a reference.
 - f. That this Honourable Court do review or set aside in its entirety the Ruling or Certificate of Costs of the Taxing Officer in this Cause on 23rd August 2022.
 - g. That this Honourable Court be pleased to re-tax the Respondent's Advocate Client Bill of cost filed in this Cause dated 12th November 2021 afresh.



- h. That costs of this application be provided for.
2. The application is premised on the grounds set out of the face thereof, and the Supporting Affidavit sworn by one Joseph Njoroge Mbugua, Counsel for the Applicant, sworn on 5th October 2022, and the Supplementary Grounds of Objection dated 13th January 2023.
3. The Respondent resisted the application through the replying affidavit of Daniel Nekoye sworn on 19th March 2024.

The Application

4. The Application is anchored on the prime grounds that;
 - I. On 12th November 2021 a Bill of Costs was filed in this cause by the Respondent law firm which Bill was served on Counsel for the Applicant.
 - II. On 18th January 2022 the Taxing Officer ordered taxation to proceed by way of written submissions. Pursuant to the order, Counsel for both parties filed and exchanged their respective submissions.
 - III. On 25th August 2022, the Learned Taxing Officer rendered herself on the taxation in a summary form.
 - IV. On 30th August 2022 the Applicant's Counsel applied for reasons for her decision on the Bill of Costs or a typed Ruling and paid for the same.
 - V. On 27th September 2022, the Applicant's Counsel's Clerk, Mr. Kahari, in one of his official visits to the Registry about the ruling collected a copy thereof.
 - VI. A critical scrutiny of the documents supplied by the Respondent in support of the Bill of costs, does reveal that the Respondent had a hand in drafting and filing of any of those documents.
 - VII. All the documents were prepared and filed by the firm of Mwangi Wahome & Company Advocates and not the Respondent. The Learned Taxing Officer failed to consider this fact notwithstanding that it was vigorously raised in the Applicant's Counsel's submissions.
 - VIII. The decision by the Taxing Master as contained in the Ruling dated 25th August 2022 is untenable and lacks a legal foundation.
 - IX. The Learned Taxing Master erred in principle when she enhanced KSHS. 148, 175 taxed costs by one-half. This, contrary to the provisions of the Advocates Remuneration Order.
 - X. The Learned Taxing Master erred in principle in not appreciating that part B of the schedule in question was inapplicable as there was no party and party Bill of costs.
 - XI. The Learned Taxing Officer erred in principle in awarding 16% on all items of disbursements set out in the bill of costs even though the items had 16% VAT already paid thus amounting to double payment.

The Response

5. The Respondent vehemently opposed the Application on the following grounds:



- a. The Respondent filed the Bill of Costs dated 12th November 2021 seeking legal fees for representing the Applicant in ELRCC No. E 333 of 2021- *Elizabeth Nyaruta Mbuthia & 8 Others v Concord Savings & Credit Cooperative Society Limited*.
- b. The ruling on the Advocate -Client Bill of Costs was delivered on 23rd August 2022 and the same was taxed at KSHS. 258, 227.00. A certificate of taxation ensued.
- c. With The application is misconceived, bad in law and tainted falsehoods. It is meant to deny the Advocate/Respondent remuneration for representing the Applicant.
- d. The Applicant hasn't sufficiently demonstrated the reason for the delay in filing a reference. Absence of a sufficient reason[s] demonstrated, the leave sought cannot be availed in their favour.
- e. The Applicant hasn't demonstrated that if this Court doesn't exercise its discretion in favour of the Applicant, the Applicant will suffer substantial loss. The allegation that if the Applicant were to pay out the amount of the Certificate of costs, it will be crippled financially, is an exaggeration for the Applicant is a financially sound entity.
- f. The Learned Taxing Master's decision on the Advocate -Client Bill of Costs was sound and premised on correct principles of law.
- g. The Applicant is guilty of laches. They have been indolent. Equity aids not the indolent but the vigilant.
- h. The Applicant ought to have filed a reference within 14 days upon the decision of the Taxing Master. Seeking an extension to do so after 42 days amounts to an inordinate delay and as such the Respondent will be highly prejudiced in the event the Application is granted.
- i. The Applicant has largely canvassed the reference notwithstanding that the Court hasn't granted leave to file the reference out of time.

Analysis and Determination

6. I have carefully considered the Notice of Motion, the grounds on which it is premised, the affidavit in support thereof, the replying affidavit by the Respondent and the submissions by both parties, and the following issues emerge for determination: -
 - a. Whether this Court can grant leave to the Applicant to file a reference out of time.
 - b. Whether this Court can deem the reference as duly filed and served and proceed to render itself on it.
 - c. Whether this Court can set aside the taxation by the Taxing Master on the Advocate-Client Bill of Costs dated 12th November 2021.

Whether this Court can grant the Applicant leave to file a reference out of time.

7. Paragraph 11 of the *Advocates Remuneration Order* [ARO] stipulates as follows on the filing of reference objecting to the decision of the Taxing Master: -
 1. Should any party object to the decision of the Taxing Office, he may within fourteen days after he decision give notice in writing to the officer after the decision give notice to the taxing officer in writing of the items of taxation which he objects to.



2. The Taxing Officer shall forthwith record and forward to the objector the reasons or his decision on those items and the objector may within fourteen days from receipt of the reasons apply to a judge by a 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 subparagraph [2] may, with leave of the Judge but not otherwise appeal.
 4. The High Court shall have power in its discretion by order enlarge the time fixed by subparagraph [2] for taking of any step. An 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 expired. [emphasis mine].
8. As expressly set out in subparagraph 4, the power to enlarge time for notice to the Taxing Master and or filing a reference is exercised discretionarily. However, the discretion to be exercised it not a discretion at large. It must be within the now established principles. Elaborately and aptly stated on enlargement of time in the case of *County Executive of Kisumu v County Government of Kisumu and 8 Others* [2017] eKLR, thus:
- [23]. It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as
- “the underlying principles that a Court should consider in exercise of such discretion:
1. 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:
 2. A party who seeks for extension of time has the burden of laying basis to the satisfaction of the Court:
 3. Whether the Court should exercise the discretion to extend time is a consideration to be made on a case to case basis:
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court:
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted:
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
9. In my view, a Court cannot exercise its discretion in favour of an Applicant for enlargement of time, where the Applicant fails to satisfactorily or at all explain the delay in filing the application, document, pleadings, appeal, etc within the requisite time. Without a satisfactory explanation, the Court will not have any business to move further to consider the other principles set out in the authority hereinabove cited.



10. Undeniably, on 29th August 2022, the Applicant wrote to the Taxing Master for the reasons on the taxation of the Advocate-Client Bill of Costs. I note that the typed ruling of the Taxing Master was ready and signed on the 25th August 2022. The Applicant does not at all or attempt to explain why it didn't collect the ruling immediately it was paid for. It didn't explain why a typed ruling that was ready by 25th August 2022, had to wait to be collected on 27th September 2022, a month after. This creates only one impression; the Applicant wasn't keen to lodge and prosecute a reference against the taxation. The filing of the instant application was an afterthought, prompted by a threat of an adverse action by the Respondent.
11. I have carefully considered the applicant's application, the grounds upon which it is premised, the supporting affidavit, and the supplementary grounds of objection mentioned hereinabove, and note that all of them completely mentions not why the reference was not lodged within the requisite time. One could expect the explanation for the delay to be brought out in them, but it wasn't. The Applicant's attempted to bring forth some explanation in his submissions, may be a reminder for him is necessary, submissions are never a substitute for evidence.
12. Having found that no explanation was given for the delay in lodging the reference, I am left with no option than to decline the application.

Whether the Court can deem the reference as duly filed and proceed to render itself on it.

13. Having declined to grant extension of time, this Court cannot have a basis to consider the reference as presented. Further, a reference that has been lodged outside time and without leave of the Court cannot be a matter that the Court can expend time onto consider
14. In the upshot, I find the Applicant's application without merit, it is hereby dismissed.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 13TH DAY OF DECEMBER, 2024.

OCHARO KEBIRA

JUDGE

In the presence of:-

.....for Applicant

.....for Respondent.

