



**Muri Mwaniki & Wamiti Advocates v Gachemi (Miscellaneous Application  
10 of 2017) [2024] KEELC 5839 (KLR) (13 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5839 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION 10 OF 2017**

**BM EBOSO, J**

**AUGUST 13, 2024**

**BETWEEN**

**MURI MWANIKI & WAMITI ADVOCATES ..... APPLICANT**

**AND**

**JOSEPH MAINA GACHEMI ..... RESPONDENT**

**RULING**

1. Falling for determination in this ruling is the notice of motion dated 27/9/2021, brought by M/s Muri Mwaniki Thige & Kageni LLP [referred to in this ruling as “the advocate”]. The application was brought under Rule 11 of the Advocates (Remuneration) Order. Through the application, the advocate seeks an order enlarging the time within which to lodge a notice of objection and bring a reference challenging the decision of the taxing officer rendered on 22/5/2017.
2. The case of the advocate is that, on 28/4/2017, the taxing officer directed that the ruling on the advocate’s bill of costs in this cause would be delivered on notice. It is their case that no such notice was subsequently served. They contend that on 24/3/2021, they learnt that the taxing officer had rendered a decision on the bill of costs on 22/5/2017 in their absence and without any prior notice to them.
3. The advocate contends that upon learning about the existence of the decision, they requested for reasons for the decision vide their letter dated 24/3/2017. They add that on 29/7/2021, a copy of the ruling of the taxing officer was furnished to them. They plead for an order enlarging the time within which to initiate a reference.
4. The respondent opposed the application through a replying affidavit sworn on 8/5/2024. His case is that he had never been served with papers relating to this suit, adding that he learnt about the suit on 26/4/2024 when he was served with the application dated 27/9/2021. He further contends that he never appointed the advocate to prepare, register or perfect a charge relating to Thika Municipality Block 1/689 and neither does he know about the said property.



5. The respondent faults the advocate for failure to annex a draft notice of objection, contending that the omission denies the Court the opportunity to ascertain whether the intended reference raises triable issues. It is the case of the respondent that the advocate had ample time to initiate a reference but deliberately failed/neglected/refused to do so. He terms the advocate's application as an abuse of the process of the court and a waste of the court's time. He urges this Court to dismiss the application.
6. The Court has considered the application, the response to the application, and the parties' oral submissions tendered in the virtual court on 4/7/2024. The single question to be answered in this ruling is whether the application satisfies the criteria for enlargement of the time within which to initiate a reference.
7. This court's jurisdiction to enlarge the time within which to initiate a reference under rule 11(2) of the Advocates (Remuneration) Order is donated by rule 11(4) of the said Order. Rule 11 in its entirety provides thus:
  - “(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) 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.”
8. The broad guiding principles on jurisdiction to enlarge time under Kenya's civil legal system were outlined by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others [2014]* eKLR as follows:
  - a. 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;
  - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
  - d. Whether there is a reasonable reason or the delay. The delay should be explained to the satisfaction of the court;
  - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;



- f. Whether the application has been brought without undue delay; and
  - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
9. The Court has considered the explanation tendered by the advocate. The Court has also read the record before it. In terms of facts, the explanation tendered by the advocate is incorrect. The correct position is that the advocate’s bill of costs came up for taxation on 27/3/2017. Mutua appeared for the advocate but there was no attendance on the part of the respondent. Mutua informed the taxing officer that the bill of costs had been served and that a return of service had been filed. The advocate invited the Court to tax the bill as drawn. On that day, the court reserved the matter for ruling/ decision on 21/4/2017. There were, however no subsequent proceedings on 21/4/2017. Indeed, for over one year, no proceedings were conducted in the matter.
10. The record of the taxing officer shows that on 22/5/2018 [more than one year from the date when the matter was reserved for ruling on the bill of costs], the taxing officer rendered a ruling in the absence of the parties. There is no evidence of any prior notice that may have been sent to the parties inviting them to attend court before the taxing officer to take the ruling. The coram of 22/5/2018 was not captured.
11. All that was recorded on 22/5/2018 reads as follows:
- “ 22/5/18
- Ruling delivered and dated in open court on 22/5/18 in absence of parties.
- Court Assistant: Munene present
- Signed/Signature
- 22/5/2018”
12. The record does not bear any communication that may have been sent to the advocate advising them that a ruling had been rendered on their bill of costs. It is therefore clear from the record that is before the Court that the advocate’s failure to initiate a reference within the stipulated time was occasioned by the taxing officer’s failure to: (i) render the ruling on the scheduled day; (ii) notify the parties on the new date for the ruling; and (iii) advise the parties that ruling had been rendered on 22/5/2018 in the absence of the parties.
13. Given the above circumstances, the Court is satisfied that the applicant is entitled to an order enlarging time so that they can access the seat of justice and ventilate their grievance. The period within which to lodge and serve both the notice of objection and the reference (chamber summons) is accordingly enlarged by 14 days from today. Costs of the application shall be in the cause.
14. The respondent claimed that he had never been served with the bill of costs. He contended that he never instructed the advocate and that he did not know the property subject matter of the alleged instructions. All I would say is that, contestation about retainer is an issue that falls within the jurisdiction of the taxing officer. The taxing officer has powers to review and set aside her ruling if it is demonstrated that there was no proper service. Nothing prevents the respondent from bringing a motion in that regard at this point. If the motion is brought, it will be disposed by the taxing officer. If the taxing officer sets aside her exparte decision and decides to consider the bill of costs interpartes, the intended reference will be spent.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 13TH DAY OF AUGUST 2024**



**B M EBOSO**

**JUDGE**

**In the presence of:**

Mr Lundi for the Applicant/Advocate

Ms Nduku for the Respondent

Court Assistant: Hinga

