



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KERICHO

MISCELLANEOUS APPLICATION NO. 3B OF 2019

HON. ERIC BETT.....1ST PETITIONER

HON. ANN TUM.....2ND PETITIONER

VERSUS

COUNTY ASSEMBLY OF KERICHO.....1ST RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF KERICHO.....2ND RESPONDENT

AND

HON SAMY KIMUTAI RONO.....1ST INTERESTED PARTY

HON. BERNARD MUTAI.....2ND INTERESTED PARTY

RULING

1. This Ruling relates to the chamber Summons dated 6/10/2021 brought by the respondents in the suits hereinafter called the Applicants. The application is brought under Article 159(2) (d) of the Constitution of Kenya, paragraph 11(4) of the Advocates Remuneration Order and, and section 1A and 3A of the Civil Procedure Act. It seeks the following orders:-

- a. Stay of execution of the Certificate of Taxations dated 15/7/2021 and or any consequential decree.
- b. The time of 14 days' within which to lodge a notice of objection to the decision of Taxing Officer of 7/7/2021 expressed in the Certificate of Taxation dated 15/7/2021 be extended/enlarged.
- c. The annexed Request for the reasons of and Objection to the taxing officer's decision dated 7/7/2021 be deemed to have been done within time as of the date of filing hereof.
- d. Costs of the application be borne by the respondents.

2. The application is supported by the affidavit sworn on 6/10/2021 by Mr. Dominic Rono in which he deposed that on 7/7/2021 the taxing officer of the Court delivered his decision on the petitioners' bill of costs dated 22/3/2021 in which he determined the costs at Kshs. 713,610; that a certificate of costs was issued on 15.7.2021 and the petitioners' counsel served the certificate of costs on the respondents on 29/9/2021; that the respondents and the counsel were not notified of the said decision before the lapse of the 14 days provided for filing objection to the decision under the law; and that the taxed costs are excessive and the respondents are desirous to lodge a reference to this court to challenge the certificate of taxation.

3. The respondents have since written to the taxing officer asking for the reasons for the decision delivered on 7/7/2021 and aver that the court has the discretion to extend the time for filing objection and reference against the decision of the taxing master. In their view, it is in the interest of justice that the orders sought to be granted as prayed.

4. The petitioners did not file any response to the application but they filed written submissions in which they urged the court to find that the application for leave is not merited because the respondents were duly notified of the ruling date vide the email sent on 2/7/2021 at 4.41PM which attached the cause list and the virtual court link. They blamed the respondents for failure to follow up the decision in good time and observed that the discretion to enlarge time must be exercised judiciously.

5. They submitted that the discretion to enlarge time to appeal and grant stay of execution is to be exercised to serve justice, and therefore a balance ought to be struck between the interests of both parties to the case. They urged that security should be provided as a condition for stay under Order 42 rule 6 of the Civil Procedure rules. For emphasis, they relied on the case of **Addax Kenya Limited v National Environment Management Authority & another [2017] e KLR** where the court ordered the applicant to provide security as a condition for stay of execution.

6. I have carefully considered the application, affidavit and the submissions filed. The issues for determination are:

- a. Whether time for filing objection and reference against the taxing master's decision dated 7/7/2021 should be enlarged.
- b. Whether execution of the Certificate of costs should be stayed pending the hearing and determination of the intended reference.

Whether time should be enlarged as prayed.

7. The ground upon which leave is sought is that the applicants were not notified of the decision of the taxing master before the lapse of the time within which to lodge objection and reference. However the petitioners have submitted that the court record confirms that the applicants were duly served with a notice of the ruling vide email on 2/7/2021 at 4.41 PM.

8. I have carefully perused the court record and noted that the applicants herein were indeed served with petitioners' bill of costs and the orders dated 19/4/2021 by which the taxing master gave the timelines within which the parties were to file submissions to the bill of costs. The petitioners complied but the respondents did not and on 26/5/2021 the taxing master fixed the matter for ruling on 23/6/2021. The record does not show that any of the parties attended court on that day or whether they were served with a notice of the ruling date.

9. No ruling was delivered on 23.6.2021 and there is no evidence that the parties attended court on that date. On 7/7/2021 the taxing master delivered the impugned decision and instructed the registry to notify the parties. Again there is no evidence that the parties were given prior notice or whether they were notified of the decision before the lapse of the time for lodging objection and reference by any aggrieved party.

10. Although the petitioners allege that the parties were notified of the ruling date on 2/7/2021 via email annexing a causelist and Court virtual link, the said email has not been availed to me and as such that remains a submission from the bar. Consequently, without belabouring the point, I find and hold that the applicants were not served with any notice before the impugned ruling was rendered or soon thereafter before the lapse of the time within which to challenge it under rule 11 of the Advocates Remuneration Order.

11. Although, the applicants did not participate in the taxation of the bill of costs before the taxing master, they were entitled to notice of the ruling date or notice of the decision soon after the delivery to enable them exercise their right of appeal if dissatisfied with the same. The applicants were never served with any notices of the ruling until the time to challenge the decision under Rule 11 of the Advocates Remuneration Order lapsed. Consequently, I am satisfied that the applicants have laid before this court sufficient ground upon which to exercise the discretion sought in their favour.

12. The petitioners did not contest the facts upon which the application is brought and as such they did not show that if the application is allowed they will suffer prejudice which cannot be remedied by costs. However, it is obvious that the applicants will be prejudiced if the application is dismissed because they will have lost their right of appeal forever.

13. In the end I find and hold that the leave sought is merited and the applicants are granted 14 days within which to file their reference against the decision of the taxing officer dated 7/7/2021. The reasons for the decision are well set out in the impugned ruling and as such there is no need of waiting for the same to be provided.

14. The order of stay of execution pending hearing of the reference is premature because the reference has not yet been filed. The petitioners are not to blame for the instant application. Consequently, I award them throw away costs of Kshs. 30,000 payable before the hearing of the reference.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 16TH DAY OF DECEMBER, 2021

ONESMUS N. MAKAU

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE