



Kiarie & 2 others v Administrator of the Estate of John Wallace Mathare (Deceased) & 2 others (Application 1 of 2014) [2019] KESC 85 (KLR) (17 December 2019) (Ruling)

Charles Karathe Kiarie & 2 others v Administrators of the Estate of John Wallace Mathare (Deceased) & 2 others [2019] eKLR

Neutral citation: [2019] KESC 85 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
APPLICATION 1 OF 2014
SC WANJALA, SCJ
DECEMBER 17, 2019**

BETWEEN

**CHARLES KARATHE KIARIE 1ST APPLICANT
THOMAS WANYOIKE WAINAINA 2ND APPLICANT
KALANG ENTERPRISES 3RD APPLICANT**

AND

**ADMINISTRATORS OF THE ESTATE OF JOHN WALLACE MATHARE
(DECEASED) 1ST RESPONDENT
ADMINISTRATORS OF THE ESTATE OF DENNIS WAWERU RIMUI
(DECEASED) 2ND RESPONDENT
ADMINISTRATORS OF THE ESTATE OF JOYSE WANJA GITAU
(DECEASED) 3RD RESPONDENT**

(Being an application for extension of time to file and serve a reference out of time against the Taxation Ruling and Orders of the Supreme Court (D. Ole Keiuwa, Hon Deputy Registrar) delivered on 13th April, 2018)

Supreme Court declines to grant an extension of time where the delay was not explained to its satisfaction.

Reported by Mathenge Mukundi

Civil Practice and Procedure - applications - application for extension of time to file and serve a reference out of time against the taxation ruling and orders of the Supreme Court – limitation period for filing the application – where it was alleged that the delay was occasioned by the Supreme Court Registry failure to furnish the applicants



with a copy of the taxation ruling and typed proceedings – whether the applicants explained the delay in filing and serving a reference against the taxation ruling and orders of the Supreme Court to its satisfaction - Supreme Court Rules, 2012, rules 21, 49 and 53.

Brief facts

The applicants sought an extension of time to file a reference against the taxation ruling and orders of the Supreme Court, submitting that the delay was occasioned by the Supreme Court registry's delay in furnishing them with a copy of the typed proceedings.

The respondents contended that a copy of the ruling and typed proceedings were not required to file a reference on taxation under rule 49 (1) of the Supreme Court Rules. Even after being furnished with a copy of the ruling and typed proceedings, the applicants had not explained the 30-day delay in filing the taxation reference and that the application was an afterthought brought with an aim to delay the cause hence an abuse of court process.

Issues

Whether the applicants explained the delay in filing and serving a reference against the taxation ruling and orders of the Supreme Court to its satisfaction.

Held

A copy of the ruling and typed proceedings were availed to the applicants on May 17, 2018, and yet, it was not until June 12, 2018, that they filed the application for extension of time. The applicants contended that the 27-day delay was the time it took them, to prepare the application for extension of time. Such an explanation was neither reasonable nor credible.

Application dismissed

Orders

- i. *Application dismissed*
- ii. *Costs to the respondents.*

Citations

Statutes

1. Constitution of Kenya, 2010
2. Supreme Court Act

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion Application by the Applicants dated 12th June 2018, brought under Rules 21, 49 and 53 of the Supreme Court Rules, 2012 and Article 163 of the [Constitution](#), seeking an extension of time to file a Reference against the Taxation Ruling and Orders of the Supreme Court Deputy Registrar dated 13th April, 2018 in Supreme Court, Civil Application No. 1 of 2014; and
2. Upon reading the Applicants' Supporting Affidavit sworn on 12th June 2018; and
3. Upon considering the Applicants' written submissions dated 12th June 2018, and filed on 8th August 2018, wherein the Applicants submit that, the delay in filing the Reference under Rule 49 of the Supreme Court Rules 2012, was occasioned by the Supreme Court Registry's delay in furnishing them with a copy of the typed proceedings; that the typed proceedings were only availed to the Applicants on 17th May 2018; and



4. Upon reading the 1st and 2nd Respondents' Replying Affidavit sworn on 10th July 2018, and filed on 11th July 2019, in which the Respondents oppose the Application, arguing that a copy of the Ruling and typed proceedings are not required to file a Reference on Taxation under Rule 49(1) of the Supreme Court Rules; that even after being furnished with a copy of the Ruling and typed proceedings, the Applicants have not explained the 30 day delay in filing the Taxation Reference; that the Application is brought with an aim to delay this cause, hence an abuse of court process; and
5. Upon considering the 1st and 2nd Respondents' written submissions dated 7th August 2018 and filed on even date in which, the Respondents have argued, that the Applicants filed their application for extension of time after an unjustified delay of 48 working days from the date of delivery of the Ruling; that the whole period of delay has not been explained satisfactorily to the Court; that the Respondents will suffer prejudice should the extension of time be granted; and, that the Application is an afterthought and an abuse of court process;
6. I find as follows;
 - a) A copy of the Ruling and typed proceedings were availed to the Applicants on the 17th May 2018, and yet, it was not until the 12th of June 2018, that they filed the Application for extension of time. The Applicants contend that the 27-day delay is the time it took them, to prepare the application for extension of time. Such an explanation, in my view, is neither reasonable nor credible.
7. Having considered the Application and the Affidavit filed in support thereof, the Replying Affidavit in opposition thereto, and the written submissions of the respective parties, I make the following Orders under Section 23(2)(b) of the *Supreme Court Act*, 2011 and Rules 21 and 23 of the Supreme Court Rules, 2012;

Orders

- (i) The Application dated 12th June, 2018 and filed on even date is hereby dismissed.
- (ii) The Applicants shall bear costs of the Application.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2019.

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

