



Mugendi Karigi & Co Advocates v Doric Industries Limited (Miscellaneous Application E057 of 2021) [2023] KEELC 15664 (KLR) (21 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15664 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E057 OF 2021
MD MWANGI, J
FEBRUARY 21, 2023
IN THE MATTER OF THE MILIMANI ELC CASE NO. 686 OF
2017 FORMERLY MILIMANI CIVIL CASE NO. 507 OF 2013**

BETWEEN

MUGENDI KARIGI & CO ADVOCATES ADVOCATE

AND

DORIC INDUSTRIES LIMITED CLIENT

(In respect of the Client's Chamber Summons Application dated 23rd September, 2022)

RULING

Background

1. In the Chamber Summons application dated September 23, 2022, the Client's/Respondent prays for the following reliefs: -
 - a. Spent.
 - b. Spent.
 - c. This Honourable Court be pleased to enlarge and extend time within which to make, file and hear this Reference in favour of the Client/ Respondent herein.
 - d. The Client/Respondent be granted leave to file the Reference herein.
 - e. This Reference be deemed to have been duly filed within the time stipulated under the provisions of the law.



- f. This Honourable Court be pleased to stay the award by the Taxing Master delivered on July 4, 2022 and its subsequent Certificate of Taxation dated August 4, 2022 pending the hearing and determination of this Reference.
 - g. This Honourable Court be pleased to set aside the Taxing Master's Ruling delivered on July 4, 2022 by the Honourable Diana Orago and the Certificate of Taxation dated August 4, 2022 in respect of the Advocate/ Applicant's Advocate-Client Bill of Costs dated February 25, 2022.
 - h. The said Advocate-Client Bill of Costs be remitted back to another Taxing Master for a fresh taxation.
 - i. This Honourable Court be pleased to re-assess the fees due on items 1,2,3 and VAT in respect of the Advocate/ Applicant's Client Bill of Costs and make findings on the same.
 - j. This Honourable Court be pleased to re-assess the variance of the award read out by this Honourable Court and the award as it appears in the Ruling dated July 4, 2022 in respect of the Advocate/Applicant's Advocate-Client Bill of Costs and make findings on the same.
2. The clients' Application is based on the grounds on the face of the Application inter alia, that the Reference herein raises triable issues. That the delay in filing the Reference herein was not deliberate but inadvertent and was occasioned by the fact that the Taxing Master has to date not furnished the Client/Respondent with the reasons for taxation in respect of the items objected to.
 3. Further that the Taxing Master has not furnished the Client/ Respondent with the reasons for the variance in respect of Kshs 4,285,020.76 that was awarded orally in Court while reading the Ruling and the sum of Kshs 5,735,020.76 awarded to their Advocate in the typed Ruling, and which amount is reflected on the Certificate of Taxation dated the August 4, 2022.
 4. The Taxing Master erred in awarding Instruction Fees on items 1 and 2 as the purported Instruction Fees of Kshs 2,500,000/- whereas she did not clarify the effort expended, the time spent, research done and skill deployed by the Advocate in arriving at the said award.
 5. That the Taxing Master erred by awarding item 3 on Getting Up fees as the same is not chargeable as the case was not ready for trial. The Taxing Master erred by awarding VAT which sum should not be allowed but rather taxed off in total as this amount has already been included in the disbursement and in the fees paid by the Client.
 6. The Client's Application is further supported by the Supporting Affidavit of Francis J. Ngigi, the Managing Director of the Client Company, deponed on the September 23, 2022. The Deponent reiterates the averments contained in the grounds in support of the application and avers that the Taxing Master delivered a Ruling orally on the July 4, 2022 and subsequently issued a Certificate of Taxation dated 4th August, 2022 to that effect.
 7. He avers that on the same date of July 4, 2022, the Client's Advocate applied for a copy of the said Ruling and only received it on the July 13, 2022. Their Advocate later on the July 15, 2022 gave a Notice to the Taxing Officer of the items the Client was objecting to and requested the Taxing Master to furnish him with reasons for taxation in respect of the objected items.
 8. He further reiterates that there is a variance between the sum of money awarded while delivering the ruling orally in court and the amount stated on the typed Ruling as alleged in the grounds in support



of the application. Further that the Taxing Master is yet to furnish them with reasons for her decision on the objected items which occasioned the delay in filing the Reference. It is therefore necessary for this Honourable Court to enlarge time within which to make, file and hear the Reference herein to enable them challenge the said Taxation.

9. That in the event the Certificate of Taxation is executed, it shall not only amount to a miscarriage of justice but will also be prejudicial, oppressive and unjust to the Client.

Replying Affidavit

10. The Advocate/Applicant opposed the Client's application by way of the Replying Affidavit of Morris M. Karigi deponed on the October 6, 2022. The deponent avers that application is unmerited, misconceived, bad in law and purely meant to hood-wink this court to issue orders in favour of the Respondent after unreasonable delay from the July 4, 2022 when the Taxing Master rendered her decision in the matter.
11. The law which the Client seeks to rely on requires that a Reference be filed within 14 days after the decision has been rendered and there is no room for enlargement of time as sought. The application should be struck out in limine to pave way for the hearing of the Advocate's application dated August 22, 2022.
12. He states that the issues raised by the Client in its application are far-fetched and intended to mislead the court as the Taxing Master considered all materials placed before arriving at her decision. In any event, the reasons for the decision are stated in the Ruling delivered on July 4, 2022 and the Ruling was available to all the parties at the registry.
13. The Advocate contends that, in any event, the Client submitted before the Taxing Master that the instruction fees ought to be taxed at a sum of Kshs 3,580,971.90 but the Taxing Master taxed it at Kshs 2,500,000/=.
14. He asserts that litigation must come to an end and therefore urges the court to dismiss the application with costs.

Court's Directions

15. The court directed that the Chamber Summons Application dated 23rd September, 2022 be canvassed by way of written submissions. Both parties complied and filed their respective submissions. The Advocate's submissions are dated 18th January, 2023 whereas the Client's submissions are dated 23rd January, 2023. The court has perused the submissions of both parties and the authorities cited.

Issues for Determination

16. Having perused the Chamber Summons Application dated September 23, 2022 together with the supporting affidavit, the Replying Affidavit filed by the Advocate – Respondent and the written submissions filed by both parties, I am of the view that the first issue that the court must determine is whether the applicant is entitled to orders for enlargement of time. Depending on the findings, the court can then proceed to determine the merits or otherwise of the reference.



Analysis and Determination

17. Paragraph 11 of the [*Advocates Remuneration Order*](#) provides as follows;

- “ 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.”

18. Undoubtedly, this court has the discretion to enlarge the time as sought by the Client/Applicant herein. Discretion must however be exercised judiciously and on the basis of the well settled principles.

19. The exercise of the discretion to enlarge time was elaborately discussed in the case of the [*County Executive of Kisumu v County Government of Kisumu and 8 others*](#) [2017] eKLR where the Supreme Court of Kenya held thus:

“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 under-lying 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 a 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.”
20. The Client/Applicant in this matter concedes that it did not comply with the provisions of Paragraph 11 (1) and (2) of the Advocates Remuneration Order which spells out the timelines within which a Reference should be filed. The Client attributes the delay to the alleged failure by the Taxing Master to give reasons for the taxation in good time.
 21. It further states that the delay in filing the Reference herein was not deliberate but inadvertent and was occasioned by the fact that the Taxing Master has to date not furnished the Client/ Respondent with the reasons for taxation in respect of the items objected to. Further, that the Taxing Master has not furnished the Client/Respondent with the reasons for the variance in respect of Kshs 4,285, 020.76 that was awarded orally in Court while reading the Ruling and the sum of Kshs 5,735,020.76 awarded to their Advocate in the typed Ruling and which amount is reflected on the Certificate of Taxation dated the August 4, 2022.
 22. Mohammed J. (as he then was) in the case of George Kagima Kariuki & 2 Others vs George M. Gichimu & 2 others [2014] eKLR held as follows on the issue of delay: -

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”
 23. The same position was taken in Stanley Kaboro Mwangi & 2 Others v Kanyamwi Trading Company Limited [2015] eKLR where the court was of the view that: -

“A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercised.”
 24. From the decisions cited above the court has the discretion to allow an application for extension of time where the applicant offers a plausible and satisfactory explanation for the delay. The Ruling by the taxing master was delivered on July 4, 2022.
 25. On July 15, 2022, the Client/Respondent wrote to the taxing master asking for reasons for the taxation of the bill of costs. A perusal of the impugned ruling however, clearly indicates that the reasons for the taxation are contained in the ruling. What other reasons was the Applicant looking for?
 26. In the case of Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd (2) (2006) 1 EA 5 the court held as follows: -

“Although rule 11 (1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons. Where the reasons for the taxation on the disputed items in the Bill are already contained in the considered ruling, there is no need to seek for further reasons simply because the unfortunate wording of sub rule (2) of rule 11 of the Advocates Remuneration Order



demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”

27. Similarly, Odunga J (as he then was) expressed a similar opinion in the case of *Evans Thiga Gaturu, Advocate vs.- Kenya Commercial Bank Limited* [2012] eKLR, in the following words;

“Where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring a reference....”

28. That is the situation in this matter. I find that it was unnecessary for the Client to yet again make a request for reasons for the taxation while the reasons were already contained in the considered ruling.

29. In any event the Client still went ahead to file this application despite the fact that the ‘reasons’ sought are yet to be supplied. This demonstrates that the Client appreciates the fact that they were indeed unnecessary. It is clear to my mind that the client’s application was merely a reaction to the Advocate’s application for entry of judgement. The application was only filed after the Advocate filed his seeking entry of judgement.

30. My finding is that the client has not offered a plausible and satisfactory explanation for the delay. The client/applicant is therefore not entitled to the discretionary orders for the enlargement of time.

31. Having found that the prayer for enlargement of time is not merited, it logically follows that there would be no basis for addressing the other issues for determination on whether the reference filed herein is merited or otherwise. The Client’s application fails.

32. For the reasons explained above the Client/Applicant’s Chamber Summons dated September 23, 2022 is hereby struck with costs to the Advocate/ Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kamau holding brief for J.P Machira for the client/Applicant.

Mr. Njagi for the Advocate/Respondent.

Court Assistant – Yvette.

