



REPUBLIC OF KENYA



**Kamau & 13 others v Muga Developers Limited & 7 others (Commercial Case E052 of 2020)
[2024] KEHC 1745 (KLR) (Commercial and Tax) (26 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E052 OF 2020
JWW MONG'ARE, J
FEBRUARY 26, 2024**

BETWEEN

LUCY WANGARI KAMAU 1ST PLAINTIFF
ELIUD NGUGI NDEGWA 2ND PLAINTIFF
LILIAN ANYANGO OWITI NGEWA 3RD PLAINTIFF
ALICIA WANGECI NGEWA 4TH PLAINTIFF
MARGARET WACHEKE 5TH PLAINTIFF
YVONNE NJERI KIANDUMA 6TH PLAINTIFF
JAMES NGUGI NJUGUNA 7TH PLAINTIFF
NKATHA GITONGA 8TH PLAINTIFF
JAQUILYN NJOKI NYAGA 9TH PLAINTIFF
DOREEN WANJIKU KAMAU 10TH PLAINTIFF
RUTH WANJIKU KAMAU 11TH PLAINTIFF
SUSAN WANJIRU KIIRU 12TH PLAINTIFF
GLADWELL NJOROGE 13TH PLAINTIFF
WINNIE WANJIRU 14TH PLAINTIFF

AND

MUGA DEVELOPERS LIMITED 1ST DEFENDANT
SUSAN WACHEKE MURAYA 2ND DEFENDANT
PETER KIARIE MURAYA 3RD DEFENDANT



TRANSNATIONAL BANK LIMITED	4 TH DEFENDANT
SURAYA SALES LIMITED	5 TH DEFENDANT
SURAYA PROPERTY GROUP LIMITED	6 TH DEFENDANT
EQUITY BANK LIMITED	7 TH DEFENDANT
THE CLASSIX AT FOURWAYS LIMITED	8 TH DEFENDANT

RULING

1. By a Chamber Summons application dated 15th December 2022 and filed by the 7th Defendant/Applicant brought under Rule 11(4) of the [Advocates Remuneration Order](#) this honourable court has been moved by the Applicant seeking the following orders:-
 - i. The time within which to issue the objection notice against the decision of the taxing officer delivered on 14th January 2022 pursuant to rule 11(1) of the [Advocates Remuneration Order](#) be enlarged.
 - ii. The notice of objection dated 30th November 2022 specifying the item objected to be deemed properly filed.
 - iii. The time within which to file a reference against the decision of the taxing officer delivered on 14th January 2022 be enlarged.
2. The Chamber Summons is supported by the annexed affidavit of Kiragu Kimani, an advocate and partner in the firm of Hamilton Harrison Mathews in conduct of the matter on behalf of the 7th Defendant. He deposes that the taxing officer taxed the 7th defendant's bill of costs at Kshs.155,441/= *vide* the ruling dated 14th January, 2022. The 7th Defendant applied for a copy of the Ruling *vide* the letter dated 19th January, 2022. Subsequently, on the strength of the letter dated 19th January, 2022, the 7th Defendant filed a reference dated 4th February, 2022. The reference was struck out *vide* the court's ruling of 3rd November, 2022. Mr. Kiragu Kimani advocate (S.C) avers that the taxing officer erred by failing to consider the amount of work done by the 7th Defendant in taxing the Bill of Costs.
3. The Plaintiffs opposed the Chamber Summons application and through a replying affidavit filed by Margaret Wacheke Kianduma the 5th Plaintiff sworn on 18th September, 2023. She deposes that the application is mischievous, evasive and misleading the court. She argued that the Applicant in their letter dated 19th January, 2022 failed to demonstrate the intentions to object to the decision of the taxing master and that failure to comply with the provisions of Rule 11(1) of the [Advocates Remuneration Order](#) is inexcusable, and therefore the instant application dated 15th December 2022 is devoid of merit and ought to be dismissed.
4. The Chamber Summons application was canvassed by way of written submissions. The 7th Defendant/Applicant filed submissions dated 11th September, 2023 while the Plaintiffs/Respondents' filed submissions dated 18th September, 2023.
5. Mr. Ondieki, learned counsel for the 7th Defendant, avers that the 7th Defendant was aggrieved by the court ruling of 14th January 2022 and has demonstrated it deserves the discretion of this court to enlarge the time within which to file an objection against the decision of the taxing officer as set out



in the supreme court in *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others* (2014) eKLR.

6. He submitted the reference filed on 4th February 2022 and was struck out on 3rd November 2022, without allowing the 7th Defendant to be heard on merit. He argued that the law allows him to file the instant application as the reference was struck out without addressing the issues between the parties and not dismissed. Counsel relied on the decision in the case of *Enock Kirao Mubanjji vs Hamid Abdalla Mbarak* (2013) eKLR to buttress this point.
7. Counsel argues the purpose of Rule 11(1) of the *Advocates Remuneration Order* is to inform the taxing master of the intention to object to the ruling requiring the taxing master to avail a reasoned copy of the ruling. He argues that having received a copy of the Ruling which had elaborate reasoning from the taxing officer there was no need to write a second letter informing the taxing master that item 1 was disputed. He submitted that Rule 11(1) is not couched in mandatory terms as it is meant to give notice to the taxing officer to provide an elaborate ruling.
8. Mr. Ondieki submitted that the delay in filing the objection had been adequately explained and urged the court to exercise its unfettered discretion and enlarge the time to file the objection.
9. Mr. Ndambiri, learned counsel for the Plaintiffs, submitted that the letter dated 19th January 2022 failed to meet the threshold of a notice of objection as outlined under Rule 11(1) of the *Advocate Remuneration Order*. He averred that the letter only called for a copy of the ruling of 14th January, 2022 but failed to indicate an intention to object to the decision or the items objected to.
10. The learned counsel citing the case of *Nicholas Kiptoo Arap Korir Salat* (*supra*) urged the court to find that the Applicant is undeserving of the orders. No evidence has been adduced to explain the blatant defiance of Rule 11(1) of the *Advocates Remuneration Order*.
11. Counsel urged the court to dismiss the application as filed.

Analysis and Determination

12. I have considered the application, and the affidavit in support and opposition together with the written submissions. The issue for consideration is whether the court should enlarge the time the 7th Respondent is to file a notice of objection.
13. It is trite law that for a court to exercise its discretion to allow an application for enlargement of time an Applicant has to establish there are good and sufficient reasons why the notice of objection was not filed within the stipulated timelines.
14. Paragraph 11 of the *Advocates Remuneration Order* provides the timelines for bringing in a notice of objections, the provisions are 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.
15. The above paragraph stipulates how a party aggrieved by the decision of the taxing master ought to move the court by issuing a notice in writing to the taxing master seeking reasons for the decision and thereafter to within 14 days file a reference to the high court.
16. The 7th Defendant argues that the main reason for seeking enlargement of time is that the Taxing master's decision of taxing the Bill of costs at Kshs.155,441/= failed to consider the amount of time and workload put in by the advocate of the 7th Defendant to have it struck out as a party to the suit. It is argued that the taxing master failed to consider the documents submitted in court by the 7th Defendant's advocate.
17. Paragraph 11 of the *Advocates Remuneration Order* vests the high court with the discretion to enlarge the time within which an aggrieved party may file a notice of objection. the paragraph stipulates as follows:-

Paragraph 11(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 expired.”
18. Further Order 50 Rule 6 of the *Civil Procedure Rules* 2010 provides for the power of the court to enlarge time where limited time is fixed for doing any act or taking any proceedings. The rule stipulates as follows:-

“The time for delivering, amending, or filing any pleading, answer or other document of any kind whatsoever may be enlarged by consent in writing of the parties or their advocates without application to the court.”
19. The 7th Defendant/Applicant avers it failed to file a notice of objection but instead filed a reference on the strength of the advocate's letter dated 19th January 2022 which sought a copy of the Ruling. The 7th Defendant argues that the Ruling of the Taxing master was well elaborate and there was no need to inform the taxing master of the intention to object to the decision.
20. From the record, the decision of the taxing officer was delivered on 14th January 2022, the letter by the 7th Defendant's advocate requesting a copy of the Ruling is dated 19th January 2022, while the Reference challenging the decision is dated 4th February 2022. The 7th Defendant intends to object to item 1 of the Advocates bill of costs. It is evident that filing a reference dated 4th February 2022 and having the same proceed in court for a hearing also contributed to more delay in complying with Paragraph 11 of the Advocates Remuneration Order.
21. The Court is called upon to determine whether the period of delay is sufficient to allow an application for an enlargement of time to file the notice of objection.



22. As stated in the case of *George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others* [2014] eKLR:-

“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 favourably exercisable.”

23. To the mind of the court the delay was occasioned by the failure of counsel to follow the due procedure. It is not in dispute that the notice of objection was not filed within the stipulated time but a reference to the decision of the taxing master was filed. The 7th Defendant has urged the court to exercise its discretion and enlarge time within the Notice of objection is to be filed.

24. Counsel argues that having received an elaborate ruling from the taxing master there was no need to file the notice of objection as the same only serves as a notification to the taxing master to issue an elaborate ruling before an objection is filed.

25. I find the explanation tendered by the 7th Defendant for failing to file the Notice of Objection within the prescribed timeline to be plausible. In the circumstance, and in the interest of justice this court will exercise its discretion and allow the application for enlargement of time within which to file a notice of objection.

26. This court therefore makes the following orders:-

- i. The prayer for enlargement of time to file a Notice of Objection to the decision of the taxing master delivered on 14th January 2022 is hereby allowed.
- ii. The Notice of objection dated 30th November 2022 specifying the item objected to be deemed duly filed.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF FEBRUARY, 2024.

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Ms. Mwangi holding brief for Mr. Kiragu for the 7th Defendant/Applicant.
2. Mr. Bob Otieno holding brief for Mr. Ouma for 2nd, 3rd, 5th and 8th Defendant.
3. Amos - Court Assistant

