



REPUBLIC OF KENYA



Kenya Sunny Industries Company Ltd v Amondi & Company Advocates (Environment & Land Miscellaneous Case E002 of 2025) [2025] KEELC 1210 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1210 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2025**

E ASATI, J

MARCH 13, 2025

BETWEEN

KENYA SUNNY INDUSTRIES COMPANY LTD APPLICANT

AND

AMONDI & COMPANY ADVOCATES RESPONDENT

RULING

1. Before court for determination is the Chamber Summons Application dated 19th February, 2025 expressed to be brought pursuant to the provisions of Paragraph 11 of the *Advocates (Remuneration) Order, 2014*, *Advocates Act*, Cap.16, section 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6 and Order 51, Rule 1 of the *Civil Procedure Rules*, 2010.
2. The application seeks for orders that:-
 1. time limited for filing of Reference under paragraph 4(2) of the *Advocates (Remuneration) Order 2014* be enlarged.
 2. the application be deemed to have been filed within such enlarged time.
 3. in the alternative to prayer (2) above, the Applicant be granted leave to file a fresh Reference within the enlarged time.
 4. the decision by the taxing officer delivered on 30th October, 2024 and the Notice to Show Cause dated 31st January, 2025 as far as the same relates to the taxation of the Bill of Costs dated 26th March, 2024 be set aside.
 5. the honourable court be pleased to refer the matter back to the Taxing Officer for re-taxation of the Bill of Costs aforesaid and with proper direction thereof.
 6. the costs of this application be borne by the Respondent.



3. The application was supported by the contents of the Supporting Affidavit sworn by the Ren Zhijian on 19th February 2025 and the annexures thereto.
4. The application was opposed. It was submitted on behalf of the Respondent that a Reference should be filed within 14 days. That 115 days had elapsed since taxation and that there is no proof that the Applicant asked the former Advocates to file the Reference.
5. That the ruling of the trial court factored money already paid by the client which was Kshs.700,000/-. That the other monies paid by the applicant were for other matters that the law firm was handling on behalf of the Applicant. That prejudice will be occasioned to the Advocate if the orders sought are granted.
6. The orders sought in the application are first, for leave to file Reference out of time.
7. Paragraph 11 of the [Advocates Remuneration Order](#) under which the application was brought 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 which he objects.

1. The Taxing Officer shall forthwith record and forward to the Objector the reasons or his decisions on those items and the Objectors 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 the objection
 2. any party aggrieved by the decision of the Judge upon an objection referred to such Judge under sub-paragraph (2) may with the leave of the Judge but not otherwise appeal to the Court of Appeal.
 3. the High Court shall have power in its discretion by order to enlarge the time fixed by sub-paragraph 1 or sub paragraph 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.
8. In the Supreme Court decision in [County Executive of Kisumu -vs- County Government of Kisumu & 8 Others](#) [2017]eKLR the Supreme Court of Kenya held that;
- 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 underlying 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 Respondent 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 consideration for extending time.
9. None of the grounds of the application contained on the face of the Chamber Summons explains the delay in filing or the failure to file the Reference within the time provided for.
 10. The Supporting Affidavit sworn by Ren Zhijian on 19th February, 2025 contains no explanation for the delay in filing the Reference.
 11. In his submissions, Counsel for the Applicant blamed the firm of Advocates previously acting for the Applicant for failing to file the Reference. There was however no evidence in support this claim. As submitted on behalf of the Respondent, there was no evidence that the Applicant gave instructions to its erstwhile Advocates to file the Reference. Blame cannot therefore be placed on the said Advocates.
 12. I find that no reason has been tendered to explain the failure to file the Reference within the time provided by law.
 13. It was submitted on behalf of the Respondent that the Respondent will suffer prejudice if the orders sought are granted and that the Reference was filed after much delay.
 14. The Ruling of the Taxing Officer, the subject of the intended Reference is not annexed to the application. I have however, had the benefit of reading it in the mother file namely Vihiga ELC MISC. Application No. E005 of 2024.
 15. The same was delivered on 30th October, 2024 and Certificate of costs issued on 19th November, 2024.
 16. The application herein was filed on 18th February, 2025 more than 3 months from the date of the ruling.
 17. The Respondent has gone a head and initiated execution proceedings for recovery of the taxed costs as the Applicant avers that the matter is scheduled for Notice to Show Cause on 18th March, 2025. The Respondent will suffer prejudice if the order sought is granted.
 18. I find that no reasonable reason to enlarge the time has been advanced. The Applicant had all the time to file the Reference and did not do so. It appears the Applicant's actions have been caused by the execution proceedings initiated by the Respondent.
 19. The application is dismissed. Each party to bear own costs of the application.
- Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 13TH DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.



E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

Opiata for the Applicant.

Nyambeki for the Respondent.

