



Kirima (Suing on Behalf of the Estate of the Late Gerishon Kamau Kirima (Deceased)) v Corner Place Investment Limited & 3 others (Environment & Land Petition 45 of 2017) [2025] KEELC 3412 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3412 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 45 OF 2017
CA OCHIENG, J
APRIL 30, 2025**

BETWEEN

**TERESIA WAIRIMU KIRIMA PETITIONER
SUING ON BEHALF OF THE ESTATE OF THE LATE GERISHON KAMAU
KIRIMA (DECEASED)**

AND

**CORNER PLACE INVESTMENT LIMITED 1ST RESPONDENT
NAIROBI CITY COUNTY GOVERNMENT 2ND RESPONDENT
CHIEF LAND REGISTRAR 3RD RESPONDENT
MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT 4TH
RESPONDENT**

RULING

1. What is before Court for determination is the 1st Respondent’s Notice of Motion application dated the 4th February 2025. It seeks the following Orders:
 1. Spent.
 2. That the firm of SOW Advocates LLP, be granted leave to come on record on behalf of the 1st Respondent / Applicant herein in place of the outgoing firm of Kimani & Muriithi Associates Advocates.
 3. GRAPISpent.
 4. That the Honourable Court be pleased to extend time and grant the 1st Respondent leave to file its reference out of time against the decision of the Taxing Master delivered on 5th March 2024.



5. That the Honourable court do set aside the decision of the Taxing Master (Hon. Vincent Kiplagat, DR.) delivered on 5th March, 2024, awarding the petitioner herein ksh.4,718,451.70.
6. That the Honourable court do issue an order for the Petitioner's Bill of costs dated 9th August 2023 to be taxed a fresh before a different Taxing Master.
7. That the Honourable court do issue such further orders as it may deem fit and just in the interest of justice.

GRAPH That costs of this application be provided for.

2. ^{8.} The application is premised on grounds on its face and the supporting affidavit of its director Abdirazak Ibrahim, where he confirms that judgment was entered herein on 13th July 2023. He explains that subsequently, the Petitioner filed a Bill of Costs dated the 9th August 2023 seeking Kshs.4,718,41.70 and in his Ruling of 5th March 2024, the Taxing Master taxed the entire Bill of Costs as drawn. He claims that the 1st Respondent was not aware of the delivery of both the Judgement and the Ruling on the Petitioner's Bill of Costs until, when Auctioneers informed it, that they were initiating execution proceedings.
3. He contends that the 1st Respondent learnt from the CTS that its previous advocates had requested for reasons for the Ruling by the Taxing Master through a letter dated the 11th May 2024 but despite making the request, the said advocates did not file a reference due to non-communication on their part hence the delay in filing the reference is a mistake of counsel that should not be visited upon it.
4. He avers that the 1st Respondent is dissatisfied with the entire decision of the Taxing Master for reasons that he erred in principle by taxing and awarding instruction fees that were disproportionate to the suit; failed to apply correctly the principles of taxation and formula provided for in Schedule 6 of the Advocates Remuneration Order 2014; awarding the manifestly excessive fee; failed to consider the totality of the circumstances surrounding the case thereby arriving at an erroneous decision; and the 1st Respondent stands to suffer substantial loss and prejudice unless the application is allowed.
5. The application is opposed by the Petitioner who filed a replying affidavit. She avers that the application is an abuse of the court process as the Applicant had filed a similar application dated the 12th August 2024. Further, that while it was incumbent upon the Applicant to file and serve a notice of objection to taxation within fourteen (14) days of the Ruling of the Taxing Master in accordance with Rule 11 (1) of the Advocates Remuneration Order, it has exhibited a Notice dated the 11th May 2024 which is out of time and the reference is an afterthought brought five (5) months after the Ruling of the Taxing Master, yet the 1st Respondent was represented by Counsel when the Ruling of the Taxing Master was delivered. She contends that the Taxing Master exercised his discretion in accordance with the law and there is no demonstration of improper exercise of jurisdiction to warrant the setting aside of the Certificate of Taxation.
6. The application was canvassed by way of written submissions.

Submissions

7. The 1st Respondent submits that in compliance with Order 9 Rule 9 of the Civil Procedure Rules, its outgoing advocates (Kimani & Muriithi Advocates) and the firm of SOW Advocates executed a consent dated 28th October 2024 allowing the latter to come on record for it after judgment.
8. It submits that failure to lodge a reference on time was a mistake by its previous Counsel and the same should not be meted against it. Further, that the court enjoys unfettered discretion to enlarge



time. It also submits that at paragraph 137 (f) and (g) of the judgment herein, general damages of Kshs. 5 million were to be paid by the 2nd to 4th Respondents while costs of the suit were awarded to the Petitioner against all the Respondents, yet the Petitioner has singled it out, for execution thus if the reference is not allowed, it will suffer prejudice. Further, that the Taxing Master failed to consider all the relevant factors, while undertaking taxation hence there is need for the court to intervene. To buttress its averments, it relied on the following decisions: Kanu National Elections Board & 2 Others v Salah Yakub Farah [2018] eKLR and Non-Governmental Organizations Coordination Board v EG & 5 Others (Petition (Application) 16 of 2019) [2023] KESC 78 (KLR) (22 September 2023) (Ruling).

9. On her part, the Petitioner relied on the case of Salat v Independent Electoral and Boundaries Commission & 7 Others (Application 16 of 2024) [2014] KESC 12 (KLR) (4 July 2014) (Ruling) to submit that the delay herein is excessive, unexplained and clearly unreasonable and that the 1st Respondent has not met the legal threshold for extension of time.
10. On whether stay should be granted, she submits that the 1st Respondent failed to establish grounds for stay orders provided under Order 42 Rule 6 of the Civil Procedure Rules. Further, that since judgement was entered jointly and severally against the Respondents in this case, they are liable collectively and should the court be inclined to exercise its discretion in favour of the 1st Respondent, it should order it, to deposit the decretal sum in a joint interest earning account operated by both Counsels within 30 days.
11. To buttress her averments, the Petitioner relied on the following decisions: M/S Lubulellah & Associates Advocates v NK Brothers Limited (Miscellaneous Civil Case 52 of 2012) [2014] KEHC 7393 (KLR) (Commercial and Tax) (24 January 2014) (Ruling); Elena Doudolova Korir v Kenyatta University [2014] KEELRC 415 (KLR) and Africa Planning & Design Consultants v Sololo Outlets Ltd (In receivership) & Anor [2018] eKLR.

Analysis and Determination

12. Upon consideration of the 1st Respondent's Notice of Motion application dated the 4th February, 2025 including the respective affidavits and rivaling submissions, the following issues are for determination: Whether the Court should extend time and grant the 1st Respondent / Applicant leave to file its reference out of time. Whether the Court should set aside the decision of the Taxing Master delivered on 5th March 2024 and refer the Petitioner's Bill of Costs dated the 9th August 2023, for taxation before a different Taxing Master.

As to whether the court should extend time and grant the 1st Respondent / Applicant leave to file its reference out of time.

13. The 1st Respondent/ Applicant has sought for extension of time to file a reference out of time, claiming its erstwhile advocate delayed in doing so. It explained that its erstwhile advocate requested for reasons for the Ruling by the Taxing Master vide its letter dated the 11th May 2024, but failed to file the reference. Further, that it was not aware of the delivery of the Judgment and Ruling on taxation, and mistake of counsel should not be meted against it.
14. The Petitioner has vehemently opposed the instant application and insisted that the 1st Respondent has failed to explain the reason for delay in filing the reference on time. She reiterates that the 1st Respondent has not met the threshold for extension of time. Further, that the envisaged notice was filed on the 11th May, 2024, which was 30 days out of time and as such no notice of objection was filed. She avers that the 1st Respondent was ably represented during taxation and it is not being candid. She insists that the instant application should be dismissed.



15. On lodging an objection to a taxed Bill of Costs and enlargement of time to file a reference, Clause 11 of the Advocates Remuneration Order stipulates thus:

- “(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.”

16. The above cited legal provisions require an aggrieved party to lodge an objection to the taxed costs in fourteen (14) days but grants the Court the discretion to enlarge time.

17. The Supreme Court of Kenya allowed an application for enlargement of time within which to file a reference in the case of *Non-Governmental Organizations Coordination Board v EG & 5 Others* (Petition (Application) 16 of 2019) [2023] KESC 78 (KLR) (22 September 2023) (Ruling), where it stated thus:

“...we hold the view that the reason for the delay is plausible and satisfactory, in addition to the fact that the instant motion was brought without undue delay and the Respondents have not shown any prejudice they stand to suffer if time sought is granted.”

18. In *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, the Supreme Court stated as follows:

“Discretion to extend time is indeed unfettered but its incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were extenuating circumstances that could enable the Court to exercise discretion in favour of the applicant. In doing so the following principles are applicable thus:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party.
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.
- iii. Whether the Court ought to exercise discretion to extend time, is a consideration to be made on a case to case basis.



- iv. Whether there is a reasonable reason for the delay, which ought to be explained to the satisfaction of the Court.
 - v. Whether there would be any prejudice suffered, the respondent if the extension was granted.
 - vi. Whether, the application had been brought without undue delay and
 - vii. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”
19. See also the case of Peter Julius Njoroge V Fidelity Commercial Bank Limited & Another (2018) eKLR.
20. In Tana and Athi Rivers Development Authority v Jeremiah Kimigho Mwakio & 3 Others, [2015] eKLR the Court of Appeal stated as follows:
- “From past decisions of this court, it is without doubt that courts will readily excuse a mistake of counsel if it affords a justiciable, expeditious and holistic disposal of a matter. However, it is to be noted that the exercise of such discretion is by no means automatic. While acknowledging that mistake of counsel should not be visited on a client, it should be remembered that counsel’s duty is not limited to his client; he has a corresponding duty to the court in which he practices and even to the other side.
21. In the current scenario, the 1st Respondent/ Applicant has claimed it was not aware of the taxation of the Bill of Costs or the delivery of the judgement, until it was informed by an auctioneer. Further, that its erstwhile Advocate sought for reasons for the taxation, but failed to file the reference. It blames its erstwhile advocate for failing to file the reference on time.
22. The Petitioner has opposed the enlargement of time and insists that the delay to file the Reference is long and unexplained. On perusal of the impugned Ruling, I note it was delivered on 5th March, 2024, while the 1st Respondent filed the instant application on 4th February, 2025.
23. From the impugned Ruling, I note the Taxing Master did not indicate any reasons for taxing the Bill of Costs as he did. It is my considered view that despite the fact that the 1st Respondent failed to file an objection within fourteen (14) days including a reference as required by law, I find the reasons it has rendered that its erstwhile advocate failed to inform it, nor file the reference on time, plausible.
24. It is trite that mistake to Counsel should not be visited upon a litigant. Even though the Petitioner has opposed the application insisting it is filed late, I note she has not demonstrated what prejudice she stands to suffer if time was enlarged for the 1st Respondent to file a reference out of time and her Bill of Costs remitted to a different Taxing Master for re - taxation.
25. In the circumstances, while associating myself with the above cited decision as well as the quoted legal provisions and in the interest of justice, I will excuse the delay and allow the 1st Respondent to file its reference out of time.
26. I however note that the 1st Respondent has already sought for a prayer to set aside the impugned Ruling of the Taxing Master and for the Petitioner’s Bill of Costs to be remitted to a different Taxing Master for taxation, in this instant application and I will hence proceed to deal with it.



As to whether the Court should set aside the decision of the Taxing Master delivered on 5th March 2024 and refer the Petitioner’s Bill of Costs dated the 9th August 2023, for taxation before a different Taxing Master.

27. The 1st Respondent has sought for setting aside the Taxing Master’s decisions delivered on 5th March, 2024 in respect to the Petitioner’s Bill of Costs dated the 9th August, 2023, which is opposed by the Petitioner. On perusal of the impugned Ruling, I note the Taxing Master did not proffer any reasons on why he taxed the Bill of Costs as it is. The Advocates Remuneration Order requires a Taxing Master to offer reasons for taxation. Further, the 1st Respondent claims that the Ruling of the Taxing Master dated the 5th March 2024 should be set aside entirely because he erred in principle, failed to take all factors into consideration before arriving at his decision and that the amount taxed was excessively high.
28. The Petitioner on her part contends that there is no demonstration that the Taxing Master injudiciously exercised his discretion to warrant setting aside of the Ruling on her Bill of Costs dated the 9th August 2023. Further, that the said decision can only be set aside if the Taxing Master erred in principle.
29. In *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR *Kipkorir* [2005] KECA 325 (KLR), the Court of Appeal stated as follows;
- “On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs.”
30. Further, in *Republic v Ministry of Agriculture & 2 Others Ex parte Muchiri W’njuguna & 6 Others* [2006] eKLR it was held that:
- “...her exercise of discretion was, in my view, and with much respect, done perfunctorily and as a mere formality. It was necessary to specify clearly and candidly how she had exercised her discretion. Discretion, as an aspect of judicial decision-making, is to be guided by principles, the elements of which are clearly stated and which are logical and conscientiously conceived. It is not enough to set out by attributing to oneself discretion originating from legal provision, and thereafter merely cite wonted rubrics under which that discretion may be exercised, as if these by themselves could permit of assignment of mystical figures of taxed costs.” Emphasis mine
31. While in the case of *Violet Ombaka Otieno & 12 Others v Moi University* [2021] eKLR, the Judge held that:
- “In determining the second issue as to whether the taxing officer exercised her discretion judiciously, the starting point is to identify the legal parameters within which this Court can interfere with a taxing officer’s discretion. In the case of *Premchand Raichand Ltd v Quarry Services of East Africa Ltd* [1972] E.A. 162 it was held that: “The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, and particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low: it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other.”



32. Based on the facts as presented while relying on the legal provisions cited and associating myself with the quoted decisions, I find that the 1st Respondent demonstrated how the Taxing Master misapprehended and misapplied the law including principles of taxation by failing to offer any reason for taxing the Bill of Costs as it is. Insofar as the Taxing Master has discretion to tax the Bill of Costs, the discretion has to be exercised judiciously and parties given reasons for the same.
33. It is against the foregoing and in the interest of justice, that I will proceed to set aside the Ruling of the Taxing Master delivered on 5th March, 2024 including the resultant Certificate of Costs and direct that the Petitioner's Bill of Costs dated 9th August 2023 be taxed afresh before a different Taxing Master other than Hon. Vincent Kiplagat.
34. In the circumstances, I find the Notice of Motion application dated the February 4, 2025 merited and will allow it but make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Muuo for Petitioner

Wafula for Applicant

Court Assistant: Joan

