



**Chaudhri & Associates v Registered Trustees of Sheikh Zayed Bin Sultan Al-Nahyan
(Miscellaneous Application E203 of 2022) [2025] KEELC 4324 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4324 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E203 OF 2022
JG KEMEI, J
MAY 29, 2025
IN THE MATTER OF THE ADVOCATES ACT (CAP 16 LAWS OF KENYA)
AND
IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER, 2014
AND
IN THE MATTER OF TAXATION OF THE BILL OF COSTS
BETWEEN
CHAUDHRI & ASSOCIATES APPLICANT
AND
THE REGISTERED TRUSTEES OF SHEIKH ZAYED BIN SULTAN AL-NAHYAN RESPONDENT

RULING

1. What is before me is the motion dated the 17/2/25 filed by applicant against the Respondent seeking orders;
 - a. That there be stay of proceedings in this case relating to taxation of the Bill of Costs dated the 23/9/22 pending the interpartes hearing and determination of this application.
 - b. That the orders of court of 10/2/25 dismissing the application dated the 23/1/24 for non-attendance be set aside and the application.
 - c. Cost of the application.



2. The application is based on the grounds on the face of it together with the supporting affidavit of Ms Fatma Juma, the counsel working in the firm of Khatib & Company Advocates and having conduct of the matter. Vide the supporting affidavit sworn on the 17/2/25, the deponent averred that when the matter was called out for hearing on 29/4/25 she was appearing before another court in ELRC Misc No E103 of 2024 and by the time she appeared in this court, the matter had been called out and dismissed for non-attendance. That the application dated the 23/1/24 sought orders interalia of stay of proceedings in respect to the taxation of the bill of costs and leave to file an appeal out of time against the Ruling of this court delivered on 11/12/24. She averred that the applicant is desirous to prosecute the appeal and urged the court to allow the application. That if the application is not allowed the respondent will proceed with taxation of the bill and thereafter execute the same.
3. The deponent stated that the non-attendance was caused by a mistake of counsel which mistake should not be visited on an innocent client, the applicant included and that the Respondent will not suffer any prejudice.
4. The application is opposed by the replying affidavit of Mohamed Ferhan Chaudhri who swore the affidavit on 6/3/2025 on behalf of the respondent. He avowed that the non-attendance on the part of the applicant's advocate cannot be excused and on its failure to comply with the directions of the court. She relied on the case of Tropical Commodities Ltd Vs Kenya Commercial Bank Limited (2009) where the court held that the failure to attend a hearing constitutes a serious lapse and may result in the dismissal of the matter.
5. The deponent castigated the applicant for filing multiple applications for stay of proceedings while failing to comply with court orders, a position that she opines amount to an abuse of the process of the court. That the filing of successive application is intended to frustrate the respondent's rights and deny it the opportunity to have the Bills of costs taxed expeditiously. See the case of The Attorney General VS J R K (2009) where the court stated that repetitive applications without any justification are an abuse of the judicial process and should not be tolerated. That the respondent has complied with all the directions of the court and it is entitled to have the bills of costs taxed without due delay. All in all, she avowed that the applicant's application is devoid of merit and urged the court to dismiss the application.
6. On 29/4/25 directions were taken by the parties who elected to canvass the application by way of written submissions. I have read and considered the said submissions and I thank counsel for their highlights.
7. The key issue for determination is whether the application is merited.
8. The law on setting aside of ex parte orders is found under Order 12, rule 7 of the Civil Procedure Rules, 2010 which provides thus:

“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
9. The tenor of the above provision is amplified by Order 51, rule 15 of the Civil Procedure Rules which provides that the court may set aside an order made ex parte.
10. In the old English case of Nagle V Fielden [1966] 2QBD 633 at p 648, and Lord Diplock in Birket Vs James [1978] A.C. 297, the court set out the principles which the law has developed to guide the exercise of discretion by court in an application for dismissal of suit for want of prosecution. These principles are:



- a. Whether there has been inordinate delay on the part of the Plaintiffs in prosecuting the case;
 - b. Whether the delay is intentional, contumelious and, therefore, inexcusable;
 - c. Whether the delay gives rise to substantial risk to fair trial or causes serious prejudice to the Defendant;
 - d. What prejudice will the dismissal occasion to the plaintiff?
 - e. Whether the plaintiff has offered a reasonable explanation for the delay;
 - f. Even if there has been delay, what does the interest of justice dictate: lenient exercise of discretion by the court?
11. In this case the impugned application was dismissed on the 10/2/15 and the current application was filed on the 17/2/25, therefore brought timeously.
 12. It was the applicant's case that her counsel was held up in another superior court and by the time she came to this court the matter had been called out and dismissed. The fact that the applicants counsel swore an affidavit shows that she owned up to the mistake. Basically, the reasons are attributed to administrative lapses in the advocates office which should not be tolerated. An advocate is an officer of this court and together with her client are obligated to assist the court to promote the achievement of the overriding objectives of the court and the due administration of justice.
 13. Ordinarily, I would in my position dismiss such infractions as the business of the court cannot be done in a haphazard manner. Once counsel is minded to accept instructions and being a duty bearer to the court and the client it is upto him/her to attend court for the matters that he/she has fixed for that day.
 14. Of course, the respondent stands to be prejudiced because he is kept away from taxing the Bills of Costs so as to enjoy the fruits of its labour.
 15. That said I have asked myself whether justice can still be done for the parties in this case so that the application of 23/1/25 is heard and determined on merits. Adopting the wisdom of the court in the case in of Banco Arabe Espanol V Bank of Uganda [1999] 2 EA 22 I think it should. The court stated as follows;

“The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors, lapses should not necessarily debar a litigant from the pursuit of his rights and unless lack of adherence to rules renders the appeal process difficult and inoperative. It should seem that the main purpose of litigation, namely, the hearing and determination of disputes should be fostered rather than hindered.”
 16. Final orders on disposal
 - a. In the end, I Allow the application but on terms.
 - b. The applicant shall pay throw away costs in the sum of Kshs 20,000/- to the Respondent within the next 15 days.
 - c. In default the orders granted herein shall lapse automatically.
 - d. The applicant to fix the application dated the 23/1/25 for hearing expeditiously.
 17. Orders accordingly



DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF MAY 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered online in the presence of;

Mr Bruno for the Applicant

Ms Mohammed Khatib for the Respondent

CA- Ms Yvette Njoroge

