



County Government of Meru v Kaburu t/a Mwirigi Kaburu & Co Advocates (Environment & Land Miscellaneous Case E016 of 2024) [2025] KEELC 1212 (KLR) (4 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1212 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND MISCELLANEOUS CASE E016 OF 2024**

**JO MBOYA, J
MARCH 4, 2025**

BETWEEN

COUNTY GOVERNMENT OF MERU APPLICANT

AND

**JOSEPH MWIRIGI KABURU T/A MWIRIGI KABURU & CO
ADVOCATES RESPONDENT**

RULING

1. The county Government of Meru [the Applicant herein] has approached the court wide application dated the 29th January 2025 and wherein same [Applicant] has sought for the following reliefs;
 - i. That this Application be certified urgent and heard Ex parte in the first instance for purposes of prayer 2 below.
 - ii. That there be and is hereby granted a stay of execution of the Certificate of Taxation dated 4th April 2024, the Certificate of Order against Meru County Government dated 11th July 2024 and all other consequential orders arising therefrom pending the hearing and determination of this application.
 - iii. That pursuant to Rule 11 (3) of the Advocates Remuneration Order, the Applicant be and is hereby granted leave to appeal the ruling of the Hon. Justice CK Nzili, Judge; in Meru ELC Misc. Application Number E016 of 2024 delivered and dated 26th June 2024.
 - iv. That upon grant of Leave to Appeal, the Notice of Appeal dated 10th July 2024; by the County Government of Meru and filed on 11th July 2024 without leave to appeal be deemed properly on record.



- v. That upon grant of Leave to Appeal, the Memorandum of Appeal dated 9th January 2025 and lodged by the County Government of Meru in the Court of Appeal at Nyeri in Civil Appeal Number /E007/2025 without leave of this Honourable Court be deemed properly on record.
 - vi. That there be and is hereby granted a stay of execution of the Certificate of Taxation dated 4th April 2024, the Certificate of Order against Meru County Government dated 11th July 2024 and all other consequential orders arising therefrom pending the hearing and determination of the Appeal against the ruling by Hon. Justice CK Nzili dated 26th June 2024.
 - vii. That the costs of this Application be provided for.
2. The instant application is premised/anchored on various grounds which have been enumerated in the body thereof. In addition, the application is supported by the affidavit of one Dr. Kiambi J T Atheru sworn on the 29th January 2025 and to which the deponent has annexed various documents including a copy of the Memorandum of Appeal that has since been filed/lodged at the Court of Appeal, Nyeri Sub-registry.
 3. Additionally, the deponent has averred that the Applicant is intent on procuring and obtaining leave to appeal and that subject to leave being granted, the Notice of Appeal which was filed without leave be deemed as duly filed. The deponent has also averred that the court should also find it apposite and expedient to deem the appeal which has since been lodged at the Court of Appeal, namely, Court of Appeal Civil Appeal No.E007 of 2025 as duly filed.
 4. Upon being served with the instant application, the Respondent filed a Replying affidavit sworn on the 11th February 2025 and to which the Respondent has annexed diverse document[s] including a copy of the certificate of order issued in line with Order 29 Rule 3 of the Civil Procedure Rules and an application wherein the Respondent sought for and procured an order of mandamus.
 5. Moreover, the Respondent has averred that the application by and on behalf of the Applicant has been mounted with unreasonable and inordinate delay. In any event, it has also been posited that the application beforehand is an afterthought and same was precipitated by an application on behalf of the Respondent and wherein the Respondent seeks to cite and punish various officers of the county government of Meru for contempt of court.
 6. The application beforehand came up for hearing on the 18th February 2025 whereupon the advocates for the respective parties covenanted to canvass and dispose of the application by way of written submissions. To this end, the court agreed and there after the application under reference was duly canvassed. For good measure, the submissions on behalf of the parties form part of the record of the court.
 7. The Applicant herein adopted the grounds contained in the body of the application as well as the averments in the body of the supporting affidavit. Furthermore, learned counsel for the Applicant sought to highlight and canvassed three salient issues for consideration and determination by the court.
 8. The issues that were raised and canvassed by and on behalf of the Appellant are namely; whether the honourable court is seized of jurisdiction to grant leave to appeal in the manner sought; whether the court is seized of the Jurisdiction to grant an order of stay of execution pending the hearing and determination of the appeal before the Court of Appeal; and whether this court is seized of jurisdiction to validate [sic] the appeal that has already been filed before the court of appeal and which in any event, was filed without leave.



9. Regarding the first issue, namely; whether the court ought to grant leave to the Applicant to appeal to the court of appeal, it was submitted that the Applicant herein had hitherto retained and engaged the services of a previous counsel. Furthermore, it was submitted that the previous counsel prosecuted the reference which was filed against the certificate of taxation issued by the taxing officer.
10. It was the further submissions of learned counsel for the Applicant that the previous counsel who represented the Applicant proceeded to and filed a notice of appeal dated the 10th July 2024 and wherein same espoused the intention of the Applicant to appeal against the ruling on the reference. Nevertheless, it was submitted that despite filing the notice of appeal, the previous counsel failed to procure and/or obtain leave to appeal in accordance with the provisions of Rule 11[3] of the Advocates Remuneration Order.
11. Furthermore, it was submitted that the question as pertains to the failure to procure and obtain leave by the previous counsel was only established and/or discerned when the Applicant instructed the new counsel to take over the conduct of the appeal at the court of appeal.
12. Arising from the foregoing, learned counsel for the Applicant has therefore submitted that it is just and expedient to grant leave to the Applicant to appeal to the court of appeal. In any event, it has been posited that the intended appeal is geared towards challenging the exorbitant award of costs that was made by the taxing officer and which award is not only contrary to public policy but is also against the principle[s] laid down by the Supreme Court in the case of Kenya Airports Authority v Otieno Ragot & Co Advocates [2014]KESC.
13. Next is the issue as to whether the court ought to grant an order of stay of execution of the certificate of taxation and the consequential orders. In this regard, learned counsel for the Applicant has submitted that this court is seized of the requisite discretion and jurisdiction to grant an order of stay of execution of the certificate of taxation.
14. In addition, it was submitted that the jurisdiction of the court to grant an order of stay of execution of the certificate of taxation cannot be fettered and/or defeated by procedural and technical objections. In any event, it has been submitted that the provisions of Article 159 [2][d] of *the Constitution*, 2010; suffice to mitigate any procedural and/or technical omissions, if any.
15. Thirdly, learned counsel for the Applicant has submitted that this court is seized of the requisite jurisdiction to grant leave to appeal and subject to granting leave to appeal to validate the appeal which has since been filed before the court of appeal, namely, Court of Appeal Civil Appeal No. E.007 of 2025.
16. Arising from the foregoing, learned counsel for the Applicant has therefore implored the court to find and hold that the application beforehand is meritorious and same [application] ought to be granted. In any event, it has been posited that the amount of monies at the foot of the impugned certificate of taxation are exorbitant and colossal and thus the imminent execution will prejudice public interest.
17. The Respondent adopted the contents of the Replying affidavit sworn on the 11th February 2025; together with the annexures thereto and thereafter highlighted two [2] salient and pertinent issues for consideration and determination by the court.
18. First and foremost, learned counsel for the Respondent has submitted that the application beforehand has been filed with unreasonable and inordinate delay, which delay has neither been accounted for nor explained. In particular, it has been submitted that the ruling in respect of the reference was rendered and delivered on the 26th June 2024 in the presence of learned counsel for the Applicant.



19. Owing to the fact that the ruling under reference was delivered in the presence of counsel for the Applicant, it has been submitted that it was incumbent upon the Applicant to seek for and procure the leave to appeal to the court of appeal, if at all; with due promptitude. However, it has been submitted that the Applicant herein did not exhibit due diligence and hence the application ought not to be granted.
20. Secondly, learned counsel of the Respondent has submitted that the orders sought by and on behalf of the Applicant herein are misconceived and legally untenable. In particular, it has been submitted that the Applicant having gone forward and filed the notice of appeal and the substantive appeal without leave, cannot now be heard to seek leave to validate the impugned documents that were filed without leave.
21. Pertinently, learned counsel for the Respondent has submitted that the orders sought by and on behalf of the Applicant cannot be granted by this court or at all. In any event, it was posited that the application beforehand constitutes an abuse of the due process of the court and furthermore, same is an exercise in futility.
22. In support of the foregoing submissions, learned counsel for the Respondent has cited and referenced inter-alia the decision in *Nicholas Kiptoo Arap Korir Sala v IEBC & 7 Others* [2013]eKLR [per Judgment of Ouka JA] and *Nicolus Kiptoo Arap Salat v IEBC & 7 Others* [2014]eKLR.
23. Arising from the foregoing, learned counsel has invited the court to find and hold that the application beforehand is not only premature and misconceived but same constitutes an abuse of the due process of the court. To this end, the court has been implored to find and hold that the application is devoid of merits and thus ought to be dismissed with costs.
24. Having reviewed the application and the response thereto and upon consideration of the oral submissions canvassed on behalf of the respective parties, the determination of the instant application turns on three [3] pertinent issues; namely, whether the application for leave to appeal has been made timeously and with due promptitude and if not, whether the delay has been accounted for; whether this court can grant Leave to appeal and direct [sic] the leave to appeal [if at all] to validate appeal number E.007 of 2025 filed at the court of appeal registry at Nyeri; and finally, whether the court can grant an order of stay of execution of the certificate of taxation [sic] pending appeal or otherwise.
25. Regarding the first issue, namely; whether the court is seized of the requisite jurisdiction to grant leave to appeal to the court of appeal against the decision rendered on the 26th June 2024 and whether the application has been mounted timeously, it suffices to posit that any person, the Applicant herein not excepted, who is desirous to appeal to the court of appeal against the decision rendered on a reference is obligated to procure and obtain leave to appeal beforehand.
26. In this regard, it is imperative to take cognizance of the provisions of Rule 11[3] of the Advocates Remuneration Order.
27. For ease of appreciation, Rule 11[3] [supra] states as hereunder;
 11. Objection to decision on taxation and appeal to Court of Appeal
 - (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.

28. To start with, there is no gainsaying that this court is seized of the requisite jurisdiction to grant leave to appeal to the court of appeal. For good measure, the mandate and or jurisdiction of this court to grant leave to appeal is statutorily circumscribed.
29. Arising from the foregoing and taking into account the provisions of Rule 11[3] of the Advocates Remuneration Order, my answer to the first limb of issue number one [1] is to the effect that this court is indeed seized of the capacity to grant leave to appeal.
30. Having disposed of the first limb of issue number one, it is now apposite to venture forward and address the critical aspect of issue number one, namely; whether the application beforehand has been mounted timeously and with due promptitude or otherwise.
31. In addition, the incidental aspect of this issue relates to if there was delay, whether such delay has been duly accounted for and/or explained to the satisfaction of the court. For coherence, the explanation must be reasonable, plausible and probable.
32. In an endeavour to discern whether the application for leave to appeal has been mounted timeously and with due promptitude. It suffices to point out that the impugned ruling, which is the subject of leave to appeal was rendered on the 26th June 2024. On the other hand, the instant application was not filed until the 29th January 2025.
33. From the computation of time, it is evident that the application beforehand was filed after a duration of seven [7] months from the date of rendition/delivery of the impugned ruling. Quite clearly, the duration under reference is unreasonable and inordinate, taking into account the provisions of Sections 1A ND 1B of the Civil Procedure Act as read together with the provisions of Article 159 [2] [b] of the Constitution.
34. Given the amount of time and/or duration that it took before the Applicant approached the court, it was incumbent upon the Applicant to account for the delay and proffer plausible, cogent and credible evidence/reasons for the delay under reference.
35. It is common ground that where an Applicant was not able to perform a particular act, in this case obtaining leave, within the prescribed timeline, such an Applicant is obligated to avail reasons to the court. For good measure, it is the reasons, if any; by the Applicant that would open the door of favour and discretion of the court. Simply put, the reasons proffered, if sufficient, would constitute the key to opening the door of justice and not otherwise.
36. Did the Applicant proffer and/or propagate any plausible and/or cogent reason or at all. I am afraid that the Applicant herein other than propagating the position that the amount of money at the foot of the certificate of taxation is exorbitant and contending that the imminent execution is likely to



prejudice the interest of the wider community of Meru; no plausible or cogent reason [explanation] has been tendered.

37. Moreover, it is apposite to state that the affidavit in support of the current application other than being argumentative and referencing issues of law including the supreme court decision in *Kenya Airport Authority v Otieno Ragot & Co Advocates* [2024]KESC 44 KLR, has paid scant attention to the question of reasons for the delay, which is key in the application of this nature.
38. I beg to underscore that the only reason or some semblance of reason, which has been adverted to in the entire body of the supporting affidavit relates to the failure by the previous counsel to seek for and procure leave to appeal in accordance with the law. Moreover, it has then been posited that the failure under reference was only [sic] discovered by the current advocates when same filed the appeal before the court of appeal.
39. Suffice it to point out that it is the Applicant who had instructed and retained the previous counsel. Having retained the previous counsel, the Applicant espoused a position that same [Applicant] were ready to stand and/or fall with the consequences of the actions or omissions of their previous counsel. [See the decision of the court of appeal in the case of *Said Sweilem Gheithan Saanum v Commissioner Of Lands (being sued through Attorney General) & 5 others* [2015] eKLR].
40. Nevertheless, the failure by the previous counsel to procure and obtain leave to appeal in accordance with Rule 11[3] of the Advocates Remuneration Order, which touches on lack of due diligence and [sic] ignorance of the law, cannot be deployed as sufficient basis by the Applicant herein.
41. Back to the importance of reasons where there is evident delay. The critical role played by plausible and cogent reasons [explanation] in unlocking the door of justice has been highlighted in a plethora of decisions. To this end, I shall endeavour to cite and reference just but a few.
42. In the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018]eKLR, the Court of Appeal stated and held thus;
 - (12) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily 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.
43. The necessity to account for and duly explain any lapse/delay was also elaborated upon in the case of *Kimani v Njoroge* [2022]KECA, where the Court of Appeal held as hereunder;
 12. In order to exercise its discretion whether or not to grant condonation, the court must be appraised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. An unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant's prospects of success. Condonation cannot be had for the mereasking.

An applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.
 13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.



44. Finally and without endeavouring to exhaust the criticality of providing reasons to justify delay, it suffices to reference the decision in *Ngei v Kibet* [2021]eKLR, where the Court of Appeal observed as hereunder;
5. On the authority of *Imperial Bank Ltd (in receivership) and Another v Alnasir Popat and 18 Others* [2018] eKLR, this Court stated that –“Some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not really the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”
45. Even though the learned Judge[s] of the Court of Appeal were dealing with the question of extension of time pursuant to Rule 4 of the Court of Appeal Rules, it is apposite to state that the ingredients [principles] that apply to extension of time can also be deployed albeit mutatis mutandis, to an application for leave to appeal mounted with unreasonable delay.
46. Flowing from the foregoing discussion, my answer to issue number one [1] is threefold. Firstly, there is no gainsaying that this court by dint of Rule 11[3] of the Advocates Remuneration Order is seized of the requisite discretion and jurisdiction to grant leave to appeal in matters arising from Reference[s] arising from the provisions of the Advocates Remuneration Order.
47. Secondly, it is important that before granting leave to appeal, the court is called upon to calibrate on and take into account several factors including the length of time if any taken by the Applicant before approaching the seat of justice, as well as the reason[s], if any; proffered for the delay.
48. Thirdly, the seven months duration of delay inspires the invocation and deployment of the doctrine of laches. Simply put, the application is defeated by the doctrine of laches.[See the decision of the court of appeal in the case of *Chief Land Registrar & 4 Others v Nathan Tirop Koech & 3 Others* [2018]eKLR.
49. Next is the issue as to whether this court can grant leave to appeal and subject to granting such leave proceed to validate an appeal that was filed before the Court of Appeal, namely, Court of Appeal Civil Appeal number E007 of 2025 or otherwise.
50. To start with, it is common ground that this court has since engaged with and addressed the question of granting leave to appeal in terms of Rule 11[3] of the Advocates Remuneration Order. Pertinently, the court has found and held that the application for leave was mounted with inordinate delay and thus same [application for leave] is defeated by the doctrine of laches.
51. Arising from the finding and holding in respect of issue number one, it is evident and crystal clear that the notice of appeal and the consequential appeal, namely; appeal number E007 of 2025, were therefore filed without the requisite leave. To this end, both the notice of appeal and the appeal are therefore contrary to the provisions of Rule 11[3] of the Advocates Remuneration Order.
52. I beg to say no more.



53. I beg to venture forward and address the critical limb of issue number two, namely; whether the leave that was sought [if at all] could operate to validate the appeal, namely; Court of Appeal Civil Appeal Number E007 of 2025, which was filed without leave.
54. To start with, it is not lost on this court that the appeal which is sought to be validated has been filed before the Court of Appeal and not before this court. Moreover, it is common ground that the Court of Appeal is by virtue of *the constitution*, is a court superior to this court. In this regard, there is no gainsaying that this court cannot purport to validate an appeal that has been filed before the Court of Appeal.
55. For good measure, such a jurisdiction if any, lies with the court of appeal and not otherwise.
56. Additionally, it is also common knowledge that any party, the Applicant herein not excepted cannot purport to file and mount an appeal or such other court process, without leave and thereafter approach the court with an application like the one beforehand to validate the illegal appeal and/or court process.
57. Surely, the Applicant herein ought to be told and reminded that the exercise of the discretion of the court is not a mechanical process. In any event, the exercise of discretion is not undertaken on the basis of mere asking. Furthermore, the exercise of discretion is not a right to be pursued and accrued by a litigant, the Applicant not excepted, at convenience.
58. Suffice it to state that where a person is obligated to procure and obtain leave before filing an appeal, such a person, the Applicant not excepted, is obliged to comply with the law. Such a person cannot respectfully adopt and deploy a short-cut like the one beforehand.
59. Be that as it may, the Supreme Court of Kenya [the apex court] has previously underscored that an appeal filed without leave is a nullity [void ab initio] and cannot be validated ex-post-facto.
60. In the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR, the Supreme Court stated as hereunder

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court’s Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the Court’s perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court’s Record.

61. Additionally, the legal position that an appeal filed either out of time or without the requisite leave as ordained under the law cannot be validated was reiterated by the Supreme Court in the case of County Executive Kisumu County Government v The County Government of Kisumu [2017]eKLR, where the court stated as hereunder;



35. We are in total agreement with the respondent that an appeal filed in this Court out of time without leave of this Court is irregular and this Court will not invoke such ‘novel’ principles as urged by applicant so as to validate that petition and deem it as properly filed. We buttress this Court’s position in Nicholas Salat when this Court stated thus:...In his submissions, counsel for the applicant acknowledged having already filed his appeal. He now prays for extension of time and urges that once so granted, the Petition of appeal already filed be deemed to have been duly filed. What we hear the applicant telling the Court is that he is acknowledging having filed a ‘document’ he calls ‘an appeal’ out of time without leave of the Court. Pursuant to rule 33(1) of the Court’s Rules, it is mandatory that an appeal can only be filed within 30 days of filing the notice of appeal. Under rule 53 of the Court’s Rules, this Court can indeed extend time. However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires.

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do. To file an appeal out of time and seek the Court to extend time is presumptive and in-appropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court’s Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the least (sic) he can do is to annex the draft intended petition of appeal for the Court’s perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court’s Record.” Consequently, were we to grant extension of time in this matter, we will not hesitate to accede to the respondents’ request, if the same is found to be the position that a petition of appeal had in fact been filed in this Court without leave of Court extending time.

62. Flowing from the foregoing, my answer to issue number two [2] is twofold. Firstly, this court is not competent or at all to validate an appeal that has since been filed at the court of appeal. If this court were to do so, it would be tantamount to overreaching itself and acting ultra-vires [See the supreme court decision in Samuel K Macharia v Kenya Commercial Bank Ltd & Others [2012]eKLR at paragraph 68 thereof].
63. Secondly, there is no gainsaying that an appeal filed without the requisite leave is a nullity [void ab initio] and thus dead before arrival. Such an appeal cannot find the basis for [sic] validation or at all.
64. Regarding the third issue, namely; whether this court is seized of jurisdiction to grant an order of stay of the certificate of taxation issued on the 4th April 2024, it is important to underscore that a certificate of taxation is a preliminary document which is issued by the taxing office in favour an advocate as pertains to Advocate- client bills of costs.
65. Once issued, the certificate of taxation is subjected to the provisions Section 51[2] of the Advocates Act, Chapter 16 Laws of Kenya, which requires that such a Certificate of Taxation must be adopted as a Judgment of the Court.



66. Pertinently, a certificate of costs issued by the taxing officer must be adopted and constituted as a judgment of the court. It is upon the adoption of same as a judgment of court that such a certificate [which shall be consumed as the judgment] is capable of execution.
67. Back to the instant matter, the Applicant herein has invited the court to grant an order of stay of execution of the certificate of taxation issued on the 4th April 2024 and consequential orders pending the hearing and determination of the appeal against the ruling rendered on the 26th June 2024. Instructively, a certificate of taxation is not capable of being stayed or at all.
68. Moreover, even assuming for the sake of arguments only, that a certificate of taxation is capable of stay of execution pending appeal, the next critical question is whether there is an appeal to underpin the issuance of [sic] the orders under reference.
69. Without belabouring the point, it is worthy to recall that the Applicant itself concede[s] that same filed the Appeal without leave. The Applicant thereafter approached this court to validate the said appeal. Nevertheless, whilst discussing issue number two, the court has since held that the appeal under reference is incapable of validation, either in the manner sought or at all.
70. Flowing from the findings in respect of issue number two [2] hereof, the inevitable conclusion is that the orders of stay sought are premature and misconceived.
71. Put differently, same have been sought for in vacuum.

Final Disposition:

72. For the reasons, which have been highlighted and enumerated in the body of the Ruling herein, it must have become crystal clear, nay apparent that the reliefs sought at the foot of the application are not only premature and misconceived, but same are legally untenable.
73. Consequently, and in the circumstances, the final orders of the court are as hereunder;
 - i. The Application beforehand is devoid of merits and same be and is hereby dismissed.
 - ii. Costs of the Application be and are hereby awarded to the Respondent.
 - iii. The costs under reference shall be taxed in the conventional manner.
74. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 4TH DAY OF MARCH, 2025.

OGUTTU MBOYA

JUDGE.

In the presence of .

Mr. Mutuma – Court Assistant

Mr. Mutembei for the Applicant.

Mr. Mwirigi Kaburu and Mr. Otieno for the Respondent.

