



**Millimo, Muthomi & Company Advocates v Mununga Tea Factory Limited (Environment and Land Miscellaneous Application E026 of 2024) [2025] KEELC 5868 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5868 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E026 OF 2024**

**AK BOR, J**

**JULY 1, 2025**

**BETWEEN**

**MILLIMO, MUTHOMI & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**MUNUNGA TEA FACTORY LIMITED ..... RESPONDENT**

**RULING**

1. The applicant filed the application dated 22/10/2024 seeking the enlargement of time within which to file and serve their reference challenging the ruling made by Honorable Atieno Joan Otieno, Taxing Master on 20/5/2024 on the amended advocate-client bill of costs dated 14/2/2024. It sought to have the application for reference annexed deemed as filed upon payment of the requisite fees and for costs of the application to be in the cause.
2. The application was made on the grounds that time for the applicants to file the reference had lapsed by a period of five (5) months and the reference could only be filed with the leave of court. The applicant averred that the delay in filing the reference was attributable to workload and a mistaken belief that the reference had been submitted. That it only became aware of the oversight when reviewing the outstanding fees schedule for the Kenya Tea Development Agency, the umbrella organization that manages and provides legal services to all tea factories under its purview including the respondent. It urged that although a delay of five months was significant, it was unintentional and arose from an assumption that all necessary steps had been completed and was purely inadvertent. Further, it contended that the respondent had not made any monetary deposits which means it is improbable that it would be prejudiced by the delay. Jacqueline Busima Cynthia, an advocate working with the applicant swore the affidavit in support of the application and attached a copy of the ruling dated 20/5/2024 together with the draft reference.
3. The respondent opposed the application on grounds that the application was bad in law, an abuse of the court process and a waste of precious judicial time. Further, that it offends Rule 11 of the *Advocates*



Remuneration Order and that the applicant had not demonstrated any plausible reason to warrant the delay of over five months and that the application does not meet the threshold for grant of the orders sought.

4. The court directed the parties to file and exchange written submissions which it has considered. The applicant gave a history of the events leading to the filing of the reference. It submitted that the court had the discretion to enlarge time for filing a reference and that the delay in filing the reference had been satisfactorily explained. It explained that advocates often shoulder a considerable case load and that burden can contribute to burnout leading to errors and oversights. It urged the court to approach such situations with understanding and acknowledgement that such challenges frequently arise from demanding responsibilities rather than from negligence. Further, that the five-month delay does not exceed the limits of reason and justice remains attainable. It invited the court to exercise its discretion favourably prioritising substance over technicalities in the interest of justice to ensure a fair and equitable outcome. The Applicant submitted that the respondent's claims of significant prejudice was speculative and unsubstantiated. That should the court deny its application it would be prejudiced as it would result in loss of legal fees which they contend, should outweigh the speculative prejudice claimed by the respondent. It contended that the reference raises triable issues and that the application should be allowed. Several cases were cited.
5. The respondents on their part submitted that the procedure for filing a reference is provided for under Rule 11 of the Advocates (Remuneration) Order. That the ruling on the applicant's bill of costs was delivered on 20/5/2024 in the presence of the applicant. That the applicants failed to issue a notice to the taxing master of the items they objected to and the taxing masters' reasoning as provided for under rule 11(2) of the Advocates Remuneration Order. While it conceded that the court has discretion to enlarge time for filing a reference, it urged that the discretion is to be exercised judiciously and that the delay in filing the reference was inordinate, lengthy, not well explained and totally inexcusable. That equity does not aid the indolent but the vigilant. The Respondent submitted that it stands to suffer great prejudice if the application were allowed as the delay occasioned by the applicant would subject it to overly lengthy litigation which is unwarranted and avoidable and in contravention of its right to the just, expeditious, proportionate and affordable resolution of disputes. It urged that the reference does not raised any triable issues and that the application should be dismissed with costs.
6. The issue for determination is whether the application has merit. The procedure for challenging the decision of a taxing master is governed by Rule 11 of the Advocates (Remuneration) Order. The Rule requires an aggrieved party to give notice in writing to the taxing officer of the items objected to, and after that file a reference to a judge within fourteen (14) days of the decision being made.
7. The decision of the taxing master was delivered on 20/5/2024 and the present application was filed on 26/10/2024 approximately five months later. The court is clothed with discretion to extend time where sufficient cause has been shown. The discretion must be exercised judiciously, guided by principles of law and equity. Among the factors to be considered are the length of the delay, the explanation offered, the degree of prejudice to the other party and whether the intended reference raises arguable issues.
8. The applicant attributes the delay to an oversight, heavy workload, and an honest but mistaken belief that the reference had already been filed. While these explanations are not particularly strong, the court takes judicial notice of the demands placed on advocates managing a high volume of work. The court is satisfied that the delay has been sufficiently explained.
9. The applicant has established sufficient cause to warrant the exercise of the court's discretion in its favour. The application dated 22/10/2024 is allowed. The annexed draft reference will be deemed as duly filed upon payment of the requisite court filing fees.



The respondent shall have the costs of this application.

**DELIVERED VIRTUALLY AT EMBU THIS 1<sup>ST</sup> DAY OF JULY 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. K. Ngethe holding brief for Ms. J. Busima for the Applicant

Ms. M. Wafula holding brief for Mr. J. Kiunga for the Respondent

Diana Kemboi- Court Assistant

