



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Laikipia University & another v E.M Juma & Ombui Advocates (Miscellaneous Civil Application E148 of 2021) [2025] KEHC 803 (KLR) (4 February 2025) (Ruling)

Neutral citation: [2025] KEHC 803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CIVIL APPLICATION E148 OF 2021
HI ONG'UDI, J
FEBRUARY 4, 2025**

BETWEEN

LAIKIPIA UNIVERSITY 1ST APPLICANT

PROF. FRANCIS K. LELO 2ND APPLICANT

AND

E.M JUMA & OMBUI ADVOCATES RESPONDENT

RULING

1. By the Notice of motion dated 26th March 2024 the applicants seek the following orders;
 - i -
 - ii Spent.
 - iii That this honourable court be pleased to enlarge the time granted-to the applicant herein to file a reference in the-ruling delivered of 16th November, 2023.
 - iv That in the alternative the honourable Court be pleased to find the attached draft reference as duly filed save for payment of court fees.
 - v That this honourable Court be pleased, to make any other orders that it court may deem just and fit to grant in the circumstances.
 - vi That costs of this-application be provided for.
2. The application is premised on the grounds on its face as well as the affidavit of one Imelda Wanjau the legal officer of the 1st applicant sworn on even date. She deponed that it was only recently that their advocates informed them of the ruling delivered on 16th November,2023, granting them fourteen (14)



days to file the reference. That the said fourteen (14) days had since lapsed and the 1st applicant was keen to file and prosecute their reference which raises many triable issues.

3. She deponed further, that their failure to file the reference on time was not intentional but occasioned by their advocates failure to attend court on that day due to some mis-communication on the delivery of the ruling. That unless the court intervened, they would have to pay the respondent a sum of Kshs. 3,073,255/= which they believe to be excess given the services-rendered. She added that no prejudice would be suffered by the respondent who would have a chance to oppose the reference and can be compensated by way of costs.
4. In response, the respondent filed a replying affidavit dated 18th September 2024 and sworn by one of its partners one Bernard O. Ombui. He averred that the ruling was delivered on 16th November, 2023 as earlier scheduled and there was adequate notice given to both parties as to the time, the virtual link and the said information was shared in the Nakuru Advocates Whatsapp group.
5. He further deposed that no good reason had been given for the delay and allowing the application would occasion the respondent great prejudice and injustice as the certificate of costs which was issued on 20th September 2022 had been pending for adoption as a judgment. He added that there was undue and unreasonable delay on the part of the applicants in both filing and service of the application and as such the same amounted to abuse of the court process.
6. The application was disposed of by way of written submissions.

Applicants' submissions

7. These are dated 4th December, 2024 and were filed by Raydon Mwangi & Associates Advocates. Counsel gave a background of the application and identified two issues for determination. He submitted that failure to file the reference within the fourteen (14)-day period was not intentional but occasioned by factors out of the control of the applicant. He urged the court to exercise its discretion and enlarge time for filing the reference. He placed reliance on the decisions in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] Eklr and Mutinda v Mutinda alias James Mutinda (Civil Appeal E256 of 2023) [2024] quoted with approval in John Gachanja Mundia v Francis Muriira Alias Francis Muthika & Another [2016] eKLR.
8. Lastly, on costs, counsel submitted that pursuant to Order 50, rule 6 of the Civil Procedure Rules costs of such an application ought to be borne by the party making it, unless the court orders otherwise. He urged the court to order that the costs of the application await the outcome of the reference.
9. He thus urged the court to allow the application as prayed and the time for filing a reference be enlarged or in the alternative the attached draft reference be deemed as filed save for payment of the filing fees.

Respondent's submissions

10. These are dated 5th December, 2024 and were filed by E.M. Juma & Ombui Advocates. Counsel gave a background of the case and identified one issue for determination which is whether an extension of time to file a reference is warranted. He submitted in the negative and cited several decisions among them Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others (supra) where the court considered and outlined the guiding principles in application for extension of time as follows;
 - i. 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.



- 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 should exercise the 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. The delay should be explained to the satisfaction of the court.
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time;

Analysis and Determination

11. I have considered the application, the affidavits, the submissions plus the authorities cited. I find, the only issue for determination to be whether the applicant has shown cause to justify the granting of the extension sought. It is a principle of law that the applicant must demonstrate good and sufficient reasons why such a party should be allowed to file the reference out of time.
12. Paragraph 11 of Section 11 of the [Advocates Act](#) provides as follows:
 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 subparagraph (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), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (5) 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.”
13. This court has wide discretionary powers under the [Civil Procedure Act](#) and Rules more specifically as stipulated in section 1 (A), 1(B),3(A), section 79 (G) on the overriding objective, the inherent jurisdiction and on account of sufficient cause to exercise jurisdiction in matters of this nature for the interest of justice. It is noted that paragraph 11 (1) (2) of the Advocates Remuneration Order does not



speak to the relevant factors that the court should consider when exercising its discretion on whether or not an extension of time should be granted.

14. In *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal while referring to other authorities observed; -

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi V Charles Gichina Mwangi – Civil Application No. Nai 26 of 2004*, this Court held; -

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi V Kenya Airways Ltd* [2003] KLR 486 in which this Court stated;-Over the years, the Court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi – Civil Application No Nai 255 of 1997*(unreported), the Court expressed itself thus; -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reasons for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

15. In light of the above cases and the law its clear that the length of the delay and the reasons for non-compliance of the time lines are important in the court’s exercise of discretion. In the instant case, in calculating the length of delay in making the application for filing reference out of time the period will start running from 20th September 2022 when the bill of costs was taxed by the Taxing master to 26th March 2024 when the aggrieved applicant lodged this application. The delay in filing the application is about an overreach of approximately 1½ years (one and a half years).
16. The court notes that the applicant had filed a similar application dated 6th January 2023 which was allowed vide the court’s ruling of 16th November 2023 where the applicants were granted leave to file a Reference within 14 days. However, the applicants failed to file the reference and they have now made the present application seeking similar orders arguing that they were not aware of the ruling.
17. The court records indicate that both parties counsel were present when the court gave the ruling date. Why did they not make a follow up to know what transpired on the said date? It is this court’s view that the applicants have not been keen on filing a reference considering the inordinate and unreasonable delay on their part which continues to prejudice the respondent. This court cannot tolerate such actions or continue to issue orders in vain.



18. For the said reasons, this court finds that the Notice of motion dated 26th March, 2024 lacks merit and the same is hereby dismissed with no order as to costs.
19. Orders accordingly

DELIVERED VIRTUALLY DATED AND SIGNED THIS 4TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

