



**Ondaba & Partners Advocates LLP v Grande Engineering & Construction Ltd (Miscellaneous Application E704 of 2023) [2025] KEHC 3150 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3150 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
MISCELLANEOUS APPLICATION E704 OF 2023**

**PM MULWA, J  
MARCH 13, 2025**

**BETWEEN**

**ONDABA & PARTNERS ADVOCATES LLP ..... ADVOCATE**

**AND**

**GRANDE ENGINEERING & CONSTRUCTION LTD ..... CLIENT**

**RULING**

**Introduction**

1. By a Chamber Summons dated 11<sup>th</sup> April 2024 the Applicant sought a stay of execution and setting aside the Taxing Master's ruling rendered on 19<sup>th</sup> December 2023 as well as enlargement of time within which to file a reference against the said ruling. The Applicant also seeks to have the consent dated 20<sup>th</sup> November 2023 between the parties adopted as the final orders of taxation and for leave be granted to the firm of Waithaka & Associates Advocates to come on record for the client.
2. In the grounds in support of his application, the Applicant claimed it engaged the services of the Advocate on various matters, who then filed a Bill of costs dated 26<sup>th</sup> July 2023. Following negotiations, a consent was reached on 20<sup>th</sup> November 2023 regarding legal fees of Kshs. 200,000/-. However, the Advocate failed to file the consent, and the Taxing Master assessed the bill at Kshs. 1,426,660/-. The Applicant contends that the ruling was made in the concealment of material facts and seeks to set it aside.
3. The Respondent opposed the application through the replying affidavit of Austin Astandi, sworn on 8<sup>th</sup> May 2024. The Respondent asserts that the Applicant failed to file the consent in court, thus it did not form part of the Taxing Master's decision. The Respondent further argues that the Applicant has failed to provide a plausible reason for the delay in seeking an enlargement of time, given that the ruling was made on 19<sup>th</sup> December 2023.



4. The application came up for hearing on 2<sup>nd</sup> May 2024 wherein the court directed that the same be heard by way of written submissions. The Applicant filed submissions dated 2<sup>nd</sup> June 2024, while the Respondent filed its submissions dated 3<sup>rd</sup> July 2024.

### **Analysis and Determination**

5. First and foremost, A party has a right to representation from counsel of their choice. As such, I allow the firm of Waithaka & Associates Advocates to come on record for the client/applicant.
6. I have carefully considered the rival arguments presented by the parties herein, the authorities cited together with the pleadings. The main issue for determination are:
  - a. Whether the applicant is entitled to orders for enlargement of time within which to file a notice of objection.
  - b. Whether the court should stay the execution of the Taxation ruling.
7. In respect of the first issue, Paragraph 11 of the *Advocates Remuneration Order* provides as follows:
  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.”
8. The discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension. The same position was taken in *Stanley Kahoro Mwangi & 2 Others v Kanyamwi Trading Company Limited* [2015] eKLR where the court was of the view that:

“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 favorably exercised.”
9. It is undisputed that the Applicant was served with the Bill of Costs and the Notice of Taxation, as per the procedural requirements. Despite being served, the Applicant chose not to participate in the proceedings. The Applicant had an opportunity to address the issues of the consent but failed to do so. I do agree with the Respondent that their relationship having turned sour, it was upon the Applicant to file the alleged consent in court. The Applicant has an obligation to be diligent and pursue its case.



10. In the present case, the Applicant asserts that it received the Taxing Master's ruling 7 days prior to filing the application, although the precise date of receipt has not been clearly stated. This lack of specificity raises concerns about the accuracy of the Applicant's timeline and casts doubt on the reliability of the claim regarding the date of receipt.
11. The Applicant has not provided any explanation for the 87-day delay in filing the application. The significant passage of time without adequate justification is a critical issue. Given the 87-day delay, and in the absence of any satisfactory explanation, the delay can only be characterized as inordinate. A delay of such length without sufficient reason to explain it goes beyond what would be considered reasonable in these circumstances.
12. I am of the considered view that the Applicant has failed to offer any compelling grounds to justify an extension of time to file a reference. The failure to participate in the proceedings, combined with the absence of a valid reason for the delay, leads me to conclude that there is no sufficient cause to grant an extension of time.
13. On the second issue, having found no reason to enlarge time for filing the Reference, it follows that execution cannot be stayed.

### **Disposition**

14. In the final result, it is my finding that the Applicant's application dated April 11, 2024 is unmerited and the same is dismissed with costs to the Respondents.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

N/A for Applicant

Mr. Wafula for Respondent

Court Assistant: Carlos

