



**Estate of Paul Njoroge Muita & another v Gitahi (Civil Appeal
748 of 2007) [2025] KEHC 5236 (KLR) (Civ) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL 748 OF 2007

SN MUTUKU, J

APRIL 3, 2025

BETWEEN

THE ESTATE OF PAUL NJOROGE MUTITA 1ST APPELLANT

WAINAINA KABUBI MUTITA 2ND APPELLANT

AND

FREDERICK ORESMUS GITAHU RESPONDENT

RULING

The Application

1. The Appellants have moved this court through a Chamber Summons dated 3rd December 2024 anchored under Rule 11(4) of the Advocates Remuneration Order and all other enabling provisions of the law, seeking the following orders:
 - a. This honourable court be pleased to issue orders for stay of execution of the respondent's certificate of taxation dated 9th September 2024 pending the hearing and determination of this application.
 - b. This honourable court be pleased to issue leave for extension of time on the 2nd Appellant/Applicant's Notice of Objection dated 4th September 2023 to be deemed as duly filed and be placed before the honourable taxing master for a response.
 - c. This honourable court be pleased to direct the honourable taxing master to forthwith respond to the Notice of Objection dated 4th September 2024 and the same be served on this applicant.
 - d. Costs of this application.



2. The application is supported by the grounds on the face of it and in the Supporting Affidavit sworn by Ezekiel E. S. Wafula on 3rd December 2024.
3. The gist of the grounds in support of the application is that the Taxing Officer did not proceed with taxation of the bill of costs due to a pending ruling of Appeal in Misc. Civil Application No. E075 of 2024 before the Court of Appeal; that the Court of Appeal did not deliver its ruling in the matter as anticipated; that the notice of taxation ought to have been held in abeyance until that ruling was delivered but the Taxing Master did not sit on 23rd July 2024 due to annual leave; that in August 2024, it was noted that a ruling on the matter had been delivered without notice to the Appellant or his advocates and that this prompted the filing of a notice of Objection dated 4th September 2024 by the Appellant.
4. The Applicant claims that the confused manner in which this matter was handled without notifying parties is the reason the notice of objection was filed outside 14 days, and this should not be blamed on the Applicant.

Replying Affidavit

5. The Application is opposed by the Respondent through a Replying Affidavit sworn on 28th January 2025. The Respondent terms the Application as frivolous and an abuse of court process and urges that it be dismissed with costs. He has deposed that the notice of taxation was heard on 23rd May 2024 and a ruling date fixed for 23rd July 2024; that it is not true that the Taxing Officer did not proceed with the matter to allow the conclusion of the application in Misc. Civil Application No. E075 of 2024 before the Court of Appeal and that the application before the Court of Appeal was not an appeal but an application for extension of time to file an appeal out of time, which application was eventually dismissed.
6. The Respondent has stated that the Applicant attended court on 23rd May 2024 and was granted leave to file a response which he failed to do; that the matter proceeded unopposed and a ruling was delivered; that the Applicant does not have locus to appeal from the ruling because he was given an opportunity to participate in the taxation proceedings but failed to do so.
7. The Respondent has stated that the Taxing Officer delivered the ruling and gave reasons and therefore a party objecting to the ruling is required to file a reference without seeking to be supplied with reasons by the Taxing Officer; that the Applicant has not met the threshold for grant of the orders he is seeking.

Submissions

8. Parties were allowed to canvass the application by way of written submissions and time allocated for filing submissions. On 5th March 2025 when the matter came up to confirm compliance with the directions of the court, only the Respondent had filed submissions. The Applicant and his counsel were not in court. I fixed the matter for ruling on 3/4/2025. Later that morning, Mr. Simiyu, for the Applicant, appeared in court and was notified of the ruling date. He undertook to file submissions for the Applicant.
9. I have found the said submissions in the CTS indicating that they were filed on 10th March 2025 although they are dated 20th February 2025. The submissions were filed outside the 14 days allocated by the court on 3rd February 2025. I will allow the submissions of the Applicant, although filed outside time.



10. The Applicant has submitted that the Ruling giving rise to this application is the one dated 9th July, 2024; that ruling was scheduled, according to the CTS, for the 23rd July, 2024, but the trial court, being the Deputy Registrar Honorable Mr. Eric Wambo, was not sitting on the 23rd July 2024 as he was away on leave from 22nd July, 2024 till 30th August 2024; that, as such, court never sat nor issued the said ruling on the 23rd July 2024.
11. It was submitted that, according to Order 21 Rules 1, 2 and 3 of the Civil Procedure Rules, 2010, an alternative date had to be issued to parties on notice and if the said ruling was issued by another Deputy Registrar, the same is supposed to have been communicated to parties; that neither the Applicant nor his advocates received such a communication and that, if the said ruling was pronounced by another judicial officer, the said judicial officer should have counter-signed the date of such pronouncement.
12. It was submitted that it was confirmed through talking to Registry Staff that the CTS was updated on 13th August, 2024 to indicate “Ruling Delivered” and therefore, the legal question that arises is why was the CTS not updated on the 23rd July 2024 as it had initially been indicated the date was saved for ruling?
13. It was submitted that issue that arises is at what point do the 14-day period time within which the Applicant, being aggrieved by the Taxing Master’s decision, started to run, is it from the 9th July 2024 being the date of the decision, or 23rd July 2024 being the CTS’ indicated date for ruling, or 13th August 2024 when the CTS was updated to read ruling delivered, or when this Applicant became aware of the said ruling being delivered?
14. The Applicant has submitted that there are triable issues that require addressing.
15. The submissions by the Respondent are dated 3rd March 2025. The Respondent has raised two issues for determination:

Whether the Applicant has met the legal threshold to warrant the grant of an extension of time.
16. On this issue, the Respondent cited *Nicholas Kiptoo arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR to emphasize that (a) extension time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the court; (b) a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; (c) whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis; (d) whether there is a reasonable reason for the delay, the delay should be explained to the satisfaction of the court; (e) whether there will be any prejudice suffered by the respondents if the extension is granted and (f) whether the application has been made without undue delay.
17. The Respondent cited section 11(1) of the Advocates Remuneration Order that allows time for filing of the Objection to the decision of the Taxing Master as 14 days and submitted that this timeline ought to be complied with because it forms part of the basis upon which an aggrieved party can approach the court in a Taxation Reference. It was submitted that the Taxing Master gave his reasons in the ruling and that the Applicant filed the Objection one (1) month out of time.
18. It was submitted that the Applicant appeared in Court on 23rd May 2024 when the matter was slotted for hearing and not for mention but the matter could not proceed because the response had not been filed; that the matter was adjourned for ruling on 23rd July 2024 in the presence of both parties; that there was no order for stay in place and therefore the court proceeded to deliver its ruling.
19. It was submitted that the Applicant has failed to provide credible reasons to the satisfaction of the court and therefore this court should not exercise its discretion in favour of the Applicant.



Whether this Honourable Court can direct the Taxing Master to responde to the Notice of Objection?

20. Under this issue, it was submitted that the Applicant filed the Objection one month out of time and therefore the Taxing Master does not have jurisdiction to deal with an objection filed outside 14 days. It was submitted, further, that the Taxing Master gave reasons in the ruling and therefore this court should not grant the prayers sought.

Determination

21. I have considered the application and the grounds thereof, the Replying Affidavit in opposition and the submissions of the parties. I am also guided by the cited authorities.
22. The underlying principles are well articulated in the Nicholas Kiptoo case cited above, that for an applicant to benefit from the discretion of this court in obtaining extension of time, that applicant must meet the threshold set out in that case.
23. The record of the court shows that parties were present in court on 23rd May 2023. The court record shows, further, that the Bill for Costs was fixed for taxation on that day and not for mention. After listening to the parties, the court fixed the matter for the ruling on 23rd July 2024. There is no other indication on the file to show the coram for 23rd July 2024. But the Ruling bears date and signature showing the date of 9th July 2024. Without specifically stating that the ruling was delivered on that date, it remains speculation on my part that indeed the ruling was delivered on that date.
24. These are anomalies that leave this court with questions rather than answers. These anomalies lead to the question posed by the Applicant: when did time within which to file a notice of objection begin to run?
25. In the absence of evidence showing coram for 9th July 2024, this court is not able to know whether any of the parties was present or not or the reasons why the ruling was delivered on 9th July 2024 instead of 23rd July 2024, the date that was communicated to both parties on 23rd May 2024. By reason of these anomalies, I will and do hereby exercise my discretion and allow prayers (a) and (b) of the Chamber Summons dated 3rd December 2024. Each party shall bear own costs for this Application.
26. I decline to grant prayer (c) of the Application.
27. Orders shall be issued accordingly.

DATED, SIGNED AND DELIVERED THIS 3RD APRIL 2025.

S. N. MUTUKU

JUDGE

