



REPUBLIC OF KENYA



**KENYA LAW**

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**Gaceru v CM Advocates LLP (Miscellaneous Application E175 of 2024)  
[2025] KEHC 4488 (KLR) (Family) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4488 (KLR)

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

**MISCELLANEOUS APPLICATION E175 OF 2024**

**H NAMISI, J**

**APRIL 8, 2025**

**BETWEEN**

**NJERI GACERU ..... CLIENT**

**AND**

**CM ADVOCATES LLP ..... ADVOCATE**

**RULING**

1. Before the Court is Chamber Summons dated 20 August 2024 seeking the following orders:
  - i. (spent)
  - ii. That the Respondent/Applicant be granted leave to file an Objection to the taxation and/or reference out of time to this Honourable Court against the Ruling of the Honourable Court's taxing Officer delivered on the 23 August 2023 by Hon. Lesootia Saitabau, Deputy Registrar;
  - iii. That upon the grant of prayer 2 above, the Honourable Court be pleased to order that the Honourable Taxing Officer decision on taxation delivered on the 23 August 2023 and all other subsequent processes be set aside and the Bill of Costs dated 19 January 2023 be taxed by the Court and/or remitted for taxation by another taxing officer other than Hon. Lesootia Saitabau, Deputy Registrar;
  - iv. That the grant of prayers 2 and 3 above do operate as a stay of execution of the ruling of the Taxing Officer above;
  - v. That this Honourable Court be pleased to grant stay of execution of the judgement and decree entered against the Defendant/Respondent and/or any further proceedings in High Court Miscellaneous Application No E015 of 2023 or any subsequent orders therefrom pending the hearing and determination of this Application;



- vi. That costs of this Application be provided for;
2. The Application is supported by the Affidavit sworn by the Applicant and premised on the grounds of the face of it.
3. The Applicant avers that she resides in the US and having been served with the Advocate-Client Bill of Costs, she did not understand what the same meant at the time. Her interpretation of the Bill of Costs was that it was some form of legal collection in which she began making payments to the Advocate/Respondent with a view of settling the same. She made a payment of USD 3200 (approx. Kshs 400,000/=).
4. The Applicant avers that she was unrepresented at the time. She had to travel back to Kenya in order to seek legal representation, hence the delay in lodging an objection to the taxation and filing a reference. She claims that she was never notified of the hearing or ruling date, neither was she served with the Advocate/Respondent's submissions on the Bill of Costs.
5. In response thereto, the Respondent filed a Replying Affidavit in which they aver that the Applicant retained the Respondent to provide legal services, but upon finalization, the Applicant declined to settle the legal fees. The Respondent was, therefore, constrained to commence taxation proceedings against the Applicant. The Applicant was properly served with the Bill of Costs, mention notices and submissions on the Bill of Costs, but she did not appear to defend the Bill. Attached to the Affidavit are copies of email correspondence dated March and April 2023.
6. The Respondent avers that not only was the Applicant properly served, but she even acknowledged receipt of the same. The Respondent contends that the reason given by the Applicant for failure to defend, being that she did not understand the documents served upon her, cannot suffice as a sufficient reason for failure to defend the proceedings. Despite having knowledge of the proceedings, the Applicant took one and a half years from when she became aware of the proceedings to seek legal counsel.
7. The Respondent avers that in today's digital world, the reason that the Applicant was in the US cannot constitute sufficient reason for failure to appear. The Applicant could easily have logged into the virtual court and explained her position.
8. The Application was canvassed by way of written submissions.
9. I have keenly read the Application, the response and submissions of the respective parties. The main issue before the Court is whether this Court should enlarge time to enable the Applicant file an objection and taxation reference. The guiding provision is Rule 11 of the Advocates Remuneration Order which provides as follows:

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 for 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 time fixed by subparagraph (1) or (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 may be so made notwithstanding that the time sought to be enlarged may have already expired.
10. The discretion of the Court to enlarge time is elaborately discussed in the case of the *County Executive of Kisumu v County Government of Kisumu and 8 others* [2017] eKLR where the Supreme Court of Kenya held thus:

“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as “the underlying principles that a Court should consider in exercise of such discretion:

1. 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;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

11. In the instant case, the Bill of Costs was taxed on 23 August 2023. The Applicant's application to file the reference out of time was filed on 23 August 2024, exactly one year later. The Applicant's reason for the delay is that she is based in the United States and did not have legal representation. The Applicant's claim that she was not served has been rebutted by the Respondent's evidence of correspondence and acknowledgement by the Applicant. It is evident that the Applicant was fully aware of the proceedings, but has not been candid with the Court. In fact, on 6 April 2023, she responded to the email, inquiring what the same meant.

12. It is the considered view of this Court that the Applicant has not afforded a reasonable explanation for the delay in filing the present Application. I concur with the Respondent that in a digital world,



the excuse of being resident in a different jurisdiction cannot carry any weight, particularly because at present, most of our Courts operate virtually. Therefore, it is my finding that the application for enlargement of time is not merited and the same is dismissed with costs to the Respondent.

**DATED AND DELIVERED AT NAIROBI THIS 8 DAY OF APRIL 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

N/A.....for the Client/Applicant

Ms. Mumbi..... for the Advocate/Respondent

Libertine Achieng.....Court Assistant

