



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Osano v CFC Stanbic Bank Limited (Civil Appeal 249 of 2018)
[2025] KEHC 4592 (KLR) (Civ) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4592 (KLR)

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

CIVIL

CIVIL APPEAL 249 OF 2018

JN MULWA, J

APRIL 9, 2025

BETWEEN

CORNEL OPIYO OSANO APPELLANT

AND

CFC STANBIC BANK LIMITED RESPONDENT

RULING

1. Before Court is an Application dated 11th October 2024 brought by the Appellant and supported by his affidavit of an even date seeking orders;
 - a. Spent.
 - b. That this court do issue an order seeking for enlargement of time for the Applicant to file reference out of time.
2. The Respondent in response to the Application dated 11th October 2024 filed its Replying Affidavit dated 29th January 2025.
3. The Court gave directions that the application be canvassed by way of written submissions which both parties have complied.
4. The Applicant seeks extension of time to file reference out of time stating that the applicant came to know of the matter when it came up for hearing on the 24th September 2024 on the Notice to Show Cause and that he had not been served with notice of taxation leading to the Bill of costs being taxed exparte.



5. It is the Applicant's submission that upon being aware of the taxation master's ruling dated 30th August 2022 this instant application was brought without undue delay and prayed that the court exercise discretion to enlarge time for filing the reference out of time.
6. The Applicant cited the case of Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR, the Supreme Court stated as follows:

“Discretion to extend time is indeed unfettered but it's incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were extenuating circumstances that could enable the Court to exercise discretion in favour of the applicant. In doing so the following principles are applicable thus:

 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party.
 - 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 ought to exercise 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, which ought to be explained to the satisfaction of the Court.
 - v. Whether there would be any prejudice suffered, the respondent if the extension was granted.
 - vi. Whether, the application had been brought without undue delay and
 - vii. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”
7. In urging the court to exercise its discretion, the applicant sought to rely on the case of; case of Lucy Wanjiru Kabutha v Jane Muthoni Mucheru [2006] eKLR where the court held:-

“The issue for determination by this court is whether the applicant has satisfied this court that she should be given leave to file her reference from the taxation of the Deputy Registrar of this court out of time. Paragraph 11 (4) of the Advocates (Remuneration) Order provides as follows:

“The High court shall have power in its discretion by order to enlarge time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order maybe made by chamber summons upon giving to every other interested party not less than three days' notice in writing or as the court may direct, and may be so made notwithstanding that the time sought time to be enlarged may have already expired.”
8. The Respondent argued that the Appellant had not given satisfactory reasons as to why the order for enlargement of time to file reference against the decision of the taxing master to warrant the exercise of this Court citing four authorities in support of its argument.
9. Based on the submissions, the court has to determine whether the applicant has made a case for enlargement of time to file a reference.



10. The Defendant in its replying affidavit stated that that all the documents were served upon the Appellant/Applicant's Advocate, Ojienda & Company Advocates, as appears from the receiving stamp affixed to each of the aforementioned documents.

11. From the record the firm of Ojienda & Company Advocates has been acting for the Applicant and there is no evidence of termination of its relation with client herein the Applicant.

The Applicant in his supporting affidavit dated 11th October 2024 stated that he only learnt of the proceedings on 24th September 2024. Clearly it is plain and clear that the Applicants Advocates were served with the necessary notices and failed to attend court, for reasons not disclosed in the supporting affidavit.

12. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts, which litigants have to lay a basis where they seek courts to grant it. Further, since extension of time is a creature of equity, one can only enjoy it if he acts equitably, and therefore, one has to lay a basis that he was not at fault so as to let time to lapse.

13. In the instant application the court is satisfied that there was some misunderstanding and/or miscommunication between the Applicant and his Advocate and in my view this is such a case, where a party ought not to be punished for mistakes and or omissions of his Counsel. Other than delay in the finalization of the of the matter, I do not consider that the Respondent's will suffer any prejudice as they will be able to present their case and the court will be in a position to hear both sides of the disputants and finally make a determination adjudicating all the parties' respective rights.

It does however appear that the Applicant may not have been diligent enough as he should have been keen in the pursuit of his case which allowed his Advocate to be lax in his handling of the matter.

14. Article 159 of *the Constitution* of Kenya 2010 provides;

1. Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution. (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

- a. justice shall be done to all, irrespective of status;
- b. justice shall not be delayed
- c. alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
- d. justice shall be administered without undue regard to procedural technicalities; and
- e. the purpose and principles of this Constitution shall be protected and promoted.

15. Paragraph (11) 4 of the Advocates Remuneration Order grants power to the court to exercise its discretion to extend time within which an aggrieved litigant may file a reference out of time, and as provided under Section, locking out a party from being heard on merit is not in accordance with the constitutional imperatives to dispense justice to all more so when no prejudice has been demonstrated to attach to the opposite party.

16. In the premises the court is persuaded to exercise its discretion in favour of allowing the Applicant's Notice of Motion application dated 11th October 2024. The Applicant shall file its reference within 7 days and serve upon which the Respondent may file its response within 7 days from date of service. The



matter shall thereafter be listed for mention for further directions on 12th June, 2025. The Respondent shall have costs of the Application.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF APRIL 2025.

JANET MULWA

JUDGE

