



Gatheru Gathemia & Co Advocates v Ngayunyi & another (As Co-Administrators of the Estate of Simon Ngatunyi Chabi - Deceased) (Miscellaneous Application E020 of 2020) [2025] KEHC 5779 (KLR) (Family) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5779 (KLR)

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

FAMILY

MISCELLANEOUS APPLICATION E020 OF 2020

H NAMISI, J

MAY 9, 2025

IN THE MATTER OF THE ADVOCATES ACT, CAP 16

BETWEEN

GATHERU GATHEMIA & CO ADVOCATES ADVOCATE

AND

LILLIAN MUTHONI NGAYUNYI 1ST CLIENT

FELIX MUTHORA NGATUNYI 2ND CLIENT

AS CO-ADMINISTRATORS OF THE ESTATE OF SIMON NGATUNYI CHABI - DECEASED

RULING

1. Before the Court is Chamber Summons dated 26 July 2024 seeking the following orders, inter alia:
 - i. Spent;
 - ii. Pending the hearing and determination of this Application, this Honourable Court be pleased to issue an order of stay of the Ruling of the Taxing Officer delivered on 13 May 2024 and the resultant Certificate of Taxation dated 27 May 2024;
 - iii. That pending the hearing and determination of the Reference, this Honourable Court be pleased to issue an order of stay of the Ruling of the Taxing Officer delivered on 13 May 2024 and the resultant Certificate of Taxation dated 27 May 2024;
 - iv. That this Honourable Court be pleased to enlarge time to allow the Client/Applicant to file the objection and reference herein.



2. The Application, which is brought under the provisions of paragraph 11 (1), (2), (3) and (4) of the Advocates (Remuneration) Order, Order 9 Rule 9 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act, Cap 21, is premised on the following grounds:
 - a. That on 13 May 2025, Hon. G.N. Sitati, Deputy Registrar, being the Taxing Officer, taxed the Advocate – Client Bill of Costs dated 18 August 2020 and allowed the same in the sum of Ksh 28,864,899/-;
 - b. That in arriving at the said figure, the Honourable Deputy Registrar failed to exercise discretion in accordance with the laid down principles of law;
 - c. That the Client/Applicant is aggrieved by the taxation, which taxation was based on an error of principle and/or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle;
 - d. That there has been no unreasonable delay in bringing this Application as the Client/Applicant who is based in the United States of America has been sick/unwell in the eyes, had an eye operation that left her admitted and on bed rest during the duration before and after the Ruling was delivered. She only accessed the Ruling after on 14 July 2024 after she had recovered;
 - e. That it is for this reason that the Client/Applicant seeks this Honourable Court to enlarge time to allow to file a Reference out of time;
 - f. That it is in the interest of justice that this Application be allowed as the Advocate’s Bill of Costs was taxed at a colossal sum of money;
 - g. That if stay of execution is not granted, the Advocate/Respondent will definitely proceed to execute against the Applicant/Client thus rendering the intended Reference nugatory;
3. In her Supporting Affidavit, the Applicant averred that over the years she has battling health problems. In May 2024, she suffered from eye problems, severe and persistent headaches and could not see properly. She sought treatment in Arizona, USA and thereafter was placed on bed rest. Upon recovery in July 2024, she was informed by her Advocates about the Ruling as well as the Certificate of Taxation. The Applicant instructed her Advocates to appeal the decision.
4. In her Further Affidavit, the Applicant averred that she has always been the instructing client, and not Felix Ngatunyi. The Advocates were not able to reach the Applicant for instructions due to her illness.
5. The Advocate/Respondent filed a Replying Affidavit opposing the Application. They averred that the Ruling on the Bill of Costs was delivered with the knowledge of the Applicant’s former Advocates and the said Advocates knew or ought to have known the timelines within which to file a Notice of Objection or reference. They did not do so in time or at all. The Respondent further averred that the Applicant has not provided a satisfactory explanation for the failure to file within the set timelines.
6. Further, the Respondent argued that even if the 1st Applicant, Lillian Ngatunyi, was indisposed, there is no reason why the 2nd Applicant, Felix Ngatunyi, did not take the appropriate action within the set timelines, yet both Applicants were represented by the same counsel and even filed a joint a response to the Bill of Costs. They contended that the attempt to file a Reference out of time is an afterthought intended to delay the matter since there is no justification offered as to why it was not filed within time. The Respondent claimed that the Applicant has always been hell bent on delaying the finalisation of the matter. This is despite the fact that no grounds have been specified for challenging the Ruling,



but instead the Applicant has made general statements, which in itself is indicative of the fact that the challenge has no sound basis.

7. The Application was canvassed by way of written submissions.
8. 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.
9. 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.”

10. In the instant case, the Bill of Costs was taxed on 13 May 2024. The Certificate of Taxation was issued on 27 May 2024. This application was filed on 26 July 2024, slightly over 2 months after the Ruling. The Applicant’s reason for the delay is that she was taken ill and had to seek treatment. Thereafter, she was put on bed rest, and could not communicate with her counsel to give further instructions.

11. It is the considered view of this Court that the explanation advanced by the Applicant is reasonable. The delay in filing the present application was not inordinate as to lock her out. Therefore, it is my finding that the Application is merited and the same is allowed. The Applicant is directed to file the Reference within 30 days of the date hereof. Costs in the cause.

DATED AND DELIVERED AT NAIROBI THIS 9 DAY OF MAY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

.Malebe.....for the Client/Applicant

.macharia and Mr Musyoka h/b Kanjama, SC....for the Advocate/Respondent

Libertine Achieng.....Court Assistant

