



Kinyua & Maingi Advocates v Trident Insurance Company Limited (Miscellaneous Application E110 of 2023) [2025] KEHC 6901 (KLR) (20 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION E110 OF 2023**

HM NYAGA, J

MAY 20, 2025

BETWEEN

KINYUA & MAINGI ADVOCATES APPLICANT

AND

TRIDENT INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The matter for determination is the application dated 30th September, 2024 which seeks the following orders:-
 - a. Spent
 - b. That pending the hearing and determination of this application, there be an order of stay of execution of proceedings of the certificate taxation issued on 27th August, 2024, and all consequential orders, proceedings and directions arising therefore.
 - c. That the Honourable court be pleased to allow the instant taxation reference against the ruling of honourable court's taxing officer delivered on 6th August, 2024 filed out of time.
 - d. That the certificate of taxation issued on 27th August, 2024 issued in respect to the respondent's advocate- client bill of costs dated 19th October, 2023 be varied, set aside and/ or vacated.
 - e. That this honourable court be pleased to order that the advocate- client bill of costs dated 19th October, 2023 be taxed afresh by honourable taxing master.
 - f. That in the alternative to prayer 4 above, the honourable court be pleased to order that the respondent's advocate- client bill of costs dated 19th October, 2023 be taxed afresh by a different taking master.



- g. That in the alternative, the honourable court be pleased to summarily strike out and/or dismiss the respondent's advocate – client bill of costs dated 19th October, 2023 and all consequential orders and proceedings thereto.
 - h. That the court be at liberty to make such other or further orders as it deems expedient to meet the ends of justice.
 - i. That costs of this application be borne by the advocate/ respondents
2. The application is supported by the grounds set out on its face and the affidavit of one Philomena Theuri, the Legal Officer of the applicant.
3. It is the applicant's case that the taxation proceeded without their participation. That the respondent has obtained a certificate of taxation for Ksh. 525,621, which is highly contested. That the applicant intended to defend the bill of costs and the failure to do so attributed to an inadvertent error, mistake and/or oversight on the part of the applicant's staff, who failed to appoint an advocate in good time. That by the time this was done, a ruling had already been delivered.
4. The applicant contends that they would suffer extreme prejudice, if the orders sought are not granted, as the core business would be crippled. That the applicant has a good and viable response to the Bill of costs and it is only fair that they be granted an opportunity to present it.
5. In response, the respondent filed a replying affidavit sworn by Njoki Kinyua, Advocate. The respondent states that the Bill of Costs and the notice of taxation were duly served on the applicant. That a notice was subsequently issued and served. That satisfied that on the service, the Taxing Master proceeded to take the bill on 6th June, 2024. That of ruling notice was also served upon the applicant.
6. It is the respondent's case that despite continuous service of all the requisite pleadings and notices the applicant failed to attend court.
7. It is further averred that in accordance with the law, a reference ought to have been filed within 14 days of the Ruling in question. That the applicant has not demonstrated which specific items on the bill of costs that were wrongly taxed, necessitating the filing of the reference out of time. That all the items were drawn to scale and were rightly allowed.
8. The respondent further avers that, the alleged inadvertence by the applicant's staff does not arise since the matter was handled by other members of staff. That it cannot be that it lacks a succession plan or handover process to justify the disorganization in their work. That this application is a frivolous attempt to delay the respondent from enjoying the fruits of, its judgment. That the applicant as been indolent and it would be a travesty of justice to exercise its discretion in their favour.
9. The parties failed their respective submissions and will refer to them in this ruling.
10. The issues for determination are: -
 - a. Whether the prayer for extension of time should be granted.
 - b. Whether the ruling of the Tax Master should be set aside.
11. There is no dispute that this is a matter involving an advocate and the client. The bill of costs was filed on 30th October, 2023 and on 20th November, 2023, a taxation notice was issued for 8th February, 2024.
12. The applicant does not really dispute the service of the bill and the subsequent notices; its case is hinged on the averments that there was an oversight on the part of its staff in instructing an advocate to defend the bill.



13. As has been correctly submitted by the parties, this court has the discretion to extend time for the applicant to file a reference out of time. Such discretion ought to be exercised judiciously and should be aimed to do justice, more importantly it is aimed at a situation where there is excisable erred on mistake. It cannot be used to aid a party who is out to derail or delay the course of justice. In Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others (2014) eKLR the Supreme Court reiterated the considerations to be made in such a case to be as follows:
- a. 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;
 - 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;
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
14. Obviously, the applicant is a company, presumably with a number of staffs. It is thus quite understandable that there may be lapse of duty by one of them and that may lead to a situation like the present one.
15. Having looked at the, reasons adduced, I find that the applicant has laid out a case for the exercise of the court’s jurisdiction in, its favour. The respondent may suffer a little inconvenience in a delay in receiving its fees for work don, but that cannot be compared to the prejudice to the applicant if it is to be condemned unheard. Indeed the Advocates Remuneration Rules recognize that there may be a delay in the filing of a reference. Rule 11(4) of the provides as follows:-
- (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.
16. I am thus inclined to grant leave to the applicant to file its reference out of time.
17. On the second issue of the settling aside of the ruling by the Taxing Master. I am of the considered view that the same can only be done once the reference is heard.
18. The applicant at this stage seeks to argue both the application to extend time and the reference itself. The reference is in the form of an appeal and in an ordinary appeal, an application to file an appeal of time is not the same as an appeal itself.
19. Having considered the matter, I grant the following orders:-
- a. The applicant is granted leave to file its reference out of time.



- b. The said reference to be filed and served within the next 7 days.
- c. There will be a stay of execution of the decree pending determination of the reference on further orders of the court on condition that the decretal sum is deposited in a joint account in the names of the applicant's advocate and the respondent within 30 days.
- d. In default of (a) above, the leave so granted shall lapse and the stay under (c) shall be automatically vacated.
- e. The applicant shall bear the costs of this application.
- f. Further discretions will be given upon delivery of this ruling.

DATED, SIGNED & DELIVERED AT MERU THIS 20TH DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

