



**Ghani v Wakabu (Miscellaneous Civil Application E069 of 2024)  
[2025] KEHC 10189 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10189 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION E069 OF 2024  
RN NYAKUNDI, J  
JULY 15, 2025**

**BETWEEN**

**MOHAMMED IFTEKHAR GHANI ..... APPLICANT**

**AND**

**PATRICK NJUGUNA WAKABU ..... RESPONDENT**

*(Being a Reference in respect of Eldoret Chief  
Magistrate Misc Civil Application No E021 of 2021)*

**RULING**

Coram: Before Justice R. Nyakundi

M/s Mathai Maina & Co. Advocates

M/s Wambua Kigamwa & Co. Advocates

1. What is pending before me for determination are chamber summons dated 13<sup>th</sup> February 2024 premised under paragraph 11(5) of the [Advocates Remuneration Order](#), section 1A, 1B, 3, 3A & 63(e) of the [Civil Procedure Act](#) in which the Applicant is seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That the Honourable Court be pleased to extend time in which to file this reference.
  - d. Spent
  - e. There be reference to this Court from taxation by the Honourable C. Wattimah (PM) and the court be pleased to hear objections by the Appellant on the taxation of the entire Bill of Costs dated 11<sup>th</sup> October, 2023 and make an order that the bill of costs as filed in Eldoret Chief



Magistrate Court Misc Civil Application No. E021 Of 2021 Between *Mohammed Iftekhar Ghani v Patrick Njuguna Wakabu* be taxed denovo.

- f. That costs of this Reference be provided for.
2. The Application is based on the grounds on the face of it among others;
- a. That the Appellant herein had filed Misc Civil Application No. E021 of 2021 before the Chief Magistrate seeking for breaking in orders to gain entry into the Respondent premises to distress for rent.
  - b. That through the Notice of withdrawal dated 14<sup>th</sup> December, 2021 the Applicant withdrew the motion dated 25<sup>th</sup> November 2021.
  - c. That the Respondent filed party and party Bill of costs dated 11<sup>th</sup> October 2023.
  - d. That under item 1 of the said Bill the Respondent claimed a sum of Kshs. 182,500/= on instructions fees whereas there was no pecuniary figure being claimed.
  - e. That the said Bill was assessed at Kshs. 189,000/= by Hon. C. Watimah (PM) on the 30<sup>th</sup> November, 2023 and Certificate of assessed cost issued.
  - f. That the Claimant Advocate was never served with the said Certificate of the assessed costs.
  - g. That the Applicant was surprised to receive visitors at his place of Business Comfy Hotel on the 2<sup>nd</sup> February 2024 who identified themselves as Auctioneers from Seventy-Seven Auctioneers.
  - h. That they handed him Warrants of Attachment of movable property and that is when he got to know that there was assessed costs.
  - i. That prior to the coming of the Auctioneers he had never been served with anything either from the Respondent nor from his previous Advocates.
  - j. That the Applicant is apprehensive that the Respondent will proceed and execute against him hence he will suffer substantial loss.
3. The Application is supported by the annexed affidavit dated 13<sup>th</sup> February 2024 sworn by Mohamed Iftekhar Ghani, the Applicant herein whose averments echo the grounds in support of the application.

### **Analysis and Determination**

4. I have read and considered the application herein and the affidavit in support of the same. There is one sole issue for determination:

### **Whether the Applicant should be granted an extension of time to file a reference**

5. The gist of the application herein is based on paragraph 11 of the [Advocates Remuneration Order](#) which outlines the procedure for challenging a Taxing Officer's decision on a bill of costs. Specifically, Paragraph 11(1) and (2) of the [Advocates Remuneration Order](#) provides as follows: -
  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 of his objection.

6. In the case of *Nyakundi & company advocates v Kenyatta National Hospital Board* [2005] eKLR the court held that: -“Under Rule 11 (2) of the *Advocates (Remuneration) Order* quoted above, a definite time frame for filing a reference is given. It is fourteen (14) days from the receipt of the reasons. If an objector is delayed in making his/her reference he/she may apply for enlargement of time to make the reference under Rule 11(4) of the same Order.”
7. Indeed, in exercising its discretion to allow an application seeking extension to file a reference out of time, a court has to be satisfied that the omission to file the same within time was excusable. In other words, there has to be a plausible explanation for the delay in filing the reference. It was apparent from the court record that the Ruling the Applicant intended to appeal against was delivered on 30<sup>th</sup> November 2023. The present application was filed on 13<sup>th</sup> February 2024. About two (2) months and thirteen (13) days had since passed. This was not an inordinately long period.
8. From the Affidavit evidence of the Applicant he stated that the said Bill was assessed at Kshs. 189,000/= by Hon. C. Watimah (PM) on the 30<sup>th</sup> November, 2023 and Certificate of assessed cost issued and that his Advocate was never served with the said Certificate of the assessed costs. The Applicant moreover stated that he was surprised to receive visitors at his place of Business Comfy Hotel on the 2<sup>nd</sup> February 2024 who identified themselves as Auctioneers from Seventy-Seven Auctioneers. Having said so, every party has a right to access any court or tribunal to have its dispute heard and determined in accordance with Article 50(1) of the *Constitution of Kenya, 2010*. Even where a party delays in doing an act, there is always a provision that would give it reprieve to seek justice.
9. Notably, Order 50 Rule 6 of *Civil Procedure Rules, 2010* empowers the court to enlarge the time to do a particular act. The said Order 50 Rule 6 of *Civil Procedure Rules* stipulates as follows: -

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise”.
10. Similarly, in the case of *A.S Kuloba & Wangila Advocates v Walingo* (Miscellaneous Application E011 of 2022) [2024] KEELRC 2176, the Court held that: -
  18. Although the Applicant has not given any reasons as to why there was a delay in filing the intended reference within the fourteen (14) days provided in law, this Honourable court is alive to the provisions of article 50 of the Kenyan *Constitution, 2010* which guarantees the right to a fair hearing.
  19. The intended reference by the Applicant is a method of appeal provided in law which promotes the fair hearing of disputes by parties.
  20. As such, this Honourable court despite the lapse of the prescribed time under Order 11 of the Advocates (Remuneration)(Amendment) Act, Cap 16 will not hinder the Applicant’s right of appeal purposes of giving a fair hearing to the Applicant.



21. In essence therefore, the Applicant’s prayer for enlargement of time to file the intended reference is merited.”

11. This court has reviewed the applicants’ application in light of this, but it has not find the Notice of Objection or the Reference that he claimed to have annexed. In any case, it is not its responsibility to evaluate the merits of the Notice of Objection and the Reference; that was solely the responsibility of the court that was supposed to hear the case and make a decision. At this point, it is only supposed to evaluate whether the applicant has proven that he had a valid reason to appeal the contested decision. Taking all the factors hereinabove into account, it is the considered view of this court that that it is in the interests of justice (emphasis court) that the Applicants be given an opportunity to have his Reference heard on merit as he would suffer prejudice if he is denied an opportunity to fully present his Reference to be heard on merit.

12. Indeed, the power to grant orders in the interest of justice and/or for the ends of justice is well captured in Section 3A of the Civil Procedure Act that states that:

“Nothing in the Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice (emphasis court) or to prevent abuse of the process of the court.”

13. In view of the foregoing, the Applicants’ Chamber Summons application dated 13<sup>th</sup> February 2024 is merited and the same be and is hereby allowed on the following conditions: -

- a. That the Applicant be and is hereby granted leave to file a Reference against the decision of the Taxing Master of 30<sup>th</sup> November 2023.
- b. That the Applicant be and is hereby directed to file and serve his Notice of Objection within fourteen (14) days from the date of this Ruling.
- c. That the Applicant be and is hereby directed to file and serve his Reference within fourteen (14) days after the Taxing Officer forwards to him the reasons for her decision.
- d. That in the event the Applicant fails to comply with clause b & c, the Respondent will be at liberty to commence legal proceedings for recovery of the taxed costs.
- e. That this matter will be mentioned on 21<sup>st</sup> July 2025 to confirm compliance of the order in clause b & c hereinabove and/or for further orders and/or directions.
- f. Costs of the application shall be in cause.

14. It is so ordered.

**DATED SIGNED AND PUBLISHED VIA E-MAIL AT ELDORET THIS 15<sup>TH</sup> DAY OF JULY 2025.**

.....

**R. NYAKUNDI**  
**JUDGE**

