



Njiru v Governor Embu County & 3 others; Mubothi (Interested Party) (Constitutional Petition E001 of 2023) [2025] KEHC 10973 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CONSTITUTIONAL PETITION E001 OF 2023**

EM MURIITHI, J

JULY 24, 2025

BETWEEN

CATHERINE WAWIRA NJIRU PETITIONER

AND

THE GOVERNOR EMBU COUNTY 1ST RESPONDENT

**COUNTY EXECUTIVE COMMITTEE MEMBER WATER IRRIGATION
ENVIRONMENT AND NATURAL RESOURCES EMBU COUNTY ... 2ND
RESPONDENT**

EMBU WATER AND SANITATION COMPANY LTD 3RD RESPONDENT

WATER SERVICES AND REGULATION BOARD 4TH RESPONDENT

AND

JAMES NJERU MUBOTHI INTERESTED PARTY

RULING

1. In a Judgment delivered on 9/10/2024 by this Court (L.M. Njuguna , J.) the Court struck out the petition herein as follows:

“ 1. Even assuming that the petition herein raised valid constitutional issues, if any, the crux of the matter is that the interested party is already holding the office of director in the 3rd respondent. In this replying affidavit, he annexed a copy of his letter of appointment dated 03rd May 2023 being annexure JMM-5. This would mean that the matter is better placed before the Employment and Labour Relations Court (ELRC) established under Article 162(2)(a) of *the Constitution* considering the fact that the interested party is holding a letter of appointment. The ELRC, being a court of equal status with the



high court, is well equipped with jurisdiction to entertain a constitutional petition stemming from the issue of appointment of the interested party and the regularity of the procedure adopted by the 3rd respondent.

2. That being said, it is not possible for this court to grant the orders sought through the petition in the form taken. Therefore, I do find that the petition lacks merit and it is hereby struck out.
3. It is so ordered.

Delivered, dated and signed at Embu this 9th day of October, 2024.

Signed By: Hon. Lady Justice Lucy Njuguna”

2. Subsequently, a two Advocate/Client Bills of Costs dated 27/11/2024 were presented by Counsel for the Respondents for taxation, and were indeed taxed in this Petition, the Deputy Registrar determining the sums of money respectively payable by the 1 and 2 respondents on the one hand and the 3rd respondent on the other at Ksh.9,143,369.40/- and Ksh.7,745,453.40/-.
3. Being aggrieved and having failed to file a reference with the timelines prescribed therefor in Rule 11 of the Advocates Remuneration Order, the 3rd respondent filed an application dated 5/6/2025 seeking the enlargement of time to file a reference and stay of execution of the taxed costs by specific orders as follows:

- “ 1) Spent.
- 2) Spent.
- 3) That pending the hearing and determination of the application stay of execution do issue against execution of taxing officer’s ruling delivered on 21/05/2025 on advocate’s/applicant’s bill of costs dated 27/11/2024.
- 4) That the 3rd Respondent be granted leave to file objection and a taxation Reference out of time against Taxing Officer’s ruling delivered on 21/05/2025 on advocate’s/applicant’s bill of costs dated 27/11/2024.
- 5) That the objection and reference annexed hereto be deemed as duly filed and served upon payment of requisite fees.
- 6) That in the alternative, taxing officer’s ruling delivered on 21/05/2025 on advocate’s/applicant’s bill of costs dated 27/11/2024 be set aside and the said Bill be taxed at such amount as this Honourable Court may deem appropriate.
- 7) That the costs of this application be provided for”

4. The application was opposed by the 3rd Respondent by a Replying Affidavit

“replying Affidavit

I Robinson Kigen of P.O. Box 22912-00100, Nairobi do hereby make oath and state as follows:-

1. I am a male adult of sound mind, advocate of the High Court of Kenya who has personal conduct of this matter, well versed with issues that have triggered the proceedings herein, duly authorized and therefore competent to swear this Affidavit.



2. I have read and understood the Applicant/Respondents' chamber summons dated 5th June, 2025 and the supporting Affidavit of James Njeru and I swear this Affidavit in opposition of the same.
3. The orders sought are discretionary in nature and the court must consider the interests of all the parties including the Advocate who despite being instructed in 2023 has not been paid for the professional services rendered hence occasioning miscarriage of justice.
4. The reasons rendered by the Managing Director that he has been unable to get a copy of the Ruling delivered on the 21st May, 2025 are not sufficient to grant an extension of time and/or to warrant the grant of the orders sought
5. The Managing Director has not demonstrated any efforts and/or tangible steps that he made to reach out to the previous counsel to secure a copy of the Ruling delivered on 21st May, 2025.
6. The Managing director never contacted us concerning the ruling delivered if at all he had challenges with the Advocate on record.
7. The Advocate who represented the 3rd Respondent is an inhouse counsel employed by the 3rd Respondent and no evidence has been tendered that he has not reported to the office since 21st May, 2025.
8. The Applicant's allegation that it was only until he was served on 3rd June, 2025 with the ruling and he came to know about it does not hold any water.
9. Other than blaming his former counsel, the applicant has not given any sufficient reasons for the delay in filing the objection to the items it is not satisfied with.
10. We refute the issue of mistake of counsel and emphasize that the Applicant remains the owner of the suit and the prosecution thereof and/or checking the progress of a case is his responsibility. It is for this reason that the Court in the case of *Edney Adaka Ismail vs Equity Bank Limited* [2014] eKLR, refused to aid an indolent party who blamed its inaction on the mistake of counsel. The Court stated:-

"It is true that where the justice of the case mandates, mistake of advocate even if they are blunders, should not be visited on the clients when the situation can be remedied by costHowever, it is not in every case that a mistake committed by an advocate would be a ground for setting aside orders of the court...I fully agree with the above holding. It is not enough for a party to simply blame the advocate but must show tangible steps taken by him in following up his matter."
11. I wish to restate that enlargement of time is a matter of judicial discretion which is intended to avoid injustice, inadvertence, or excusable mistake or error but is not designed to assist a person who deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice.
12. The Applicant has approached this court with unclean hands since this is a 2023, where despite being represented in Court has refused to pay us our legal



fees for services rendered. Annexures to my Further Affidavit sworn on 19th May, 2025 confirms this.

13. The Applicant's apprehension of intended execution is not valid and premature as we have not even extracted certificate of costs and execution has not commenced yet.
 14. The Applicant has not even annexed an authority to file these proceedings as is required by the law with respect to companies.
 15. The Application is fundamentally defective, unmerited and should be dismissed with costs."
5. Counsel for the 3rd Respondent/Client, the Applicant herein and the Advocate/Respondent then filed written submissions dated 20/6/2025 and 18/6/2025 urging their respective positions on the matter.

Determination

6. The Court has considered the application, response and submissions of Counsel.
7. At the outset, it would appear to the Court that the Bill of Cost having been Advocate/Client ought to have been filed in separate civil proceedings file and not in the same constitutional petition, and judgment obtained before attempt at execution. As pointed out by the respondent advocates' firm there is no application for execution on file.
8. The provisions for objection to the taxing master's decision on taxation is provided for under Rule 11 of the Advocates remuneration Order as follows:
 - " 11. 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 of 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 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.



[L.N. 8/1965, Sch.]”

9. The decision on taxation is shown to have been given on 21/5/2025 and consequently, the Objector had upto 4/6/2025. The filing of the application for extension of time on the 5/6/2025 was just a day out of time.
10. The Court has power under Order 50 Rule 6 of the Civil Procedure Rules to extend time for taking a step under the Rules as follows:
 - “6. Power to enlarge time [Order 50, rule 6]
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.”
11. The delay of one (1) day over the fourteen days allowed under paragraph 11 of the Advocates Remuneration Order for filing of taxation is not inordinate and it is not wholly inconceivable that a party, even one represented by an inhouse counsel at the delivery of ruling on taxation, may be delayed by reason of failure of such counsel to communicate in good time the decision to the party’s Managing Director for instructions to file objection to taxation. There is nothing on the evidence to show, in this case that the applicant has sought to delay the hearing of this matter. Cf. *Edney Adaka Ismail vs Equity Bank Limited* [2014] eKLR.
12. The Court respectfully notes the guidance of the Supreme Court in application for extension of time set out in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR,
13. The fact of default in attaching a copy of the ruling as was the subject of the decision in *Ranyanya & another v Ochieng* (Miscellaneous Reference Application E003 of 2022) [2023] KEHC 2053 is for consideration at the hearing of a reference from taxation not at the stage of seeking leave to file a reference. In addition, this Court considers that the failure to attach a copy of the certificate of taxation and or ruling indicating the taxation and reasons for taxation of costs by the taxing officer, may be cured by a subsequent filing. This being primarily an application for extension of time to file and for stay of execution pending filing/hearing and termination of such reference from taxation, and not the actual reference, the default may be cured in the filing upon grant of leave to file out of time. The applicant may not be punished for what it has filed in Court without leave before the grant of extension of time to file reference.
14. Moreover, the taxation and Reasons of the taxing officer are in a Ruling dated 21/5/2025 which is available on the Case Tracking System (CTS), and it is doubtful whether the ground of failure to attach the copy of ruling which is today already available on-line in the Judiciary CTS, which is accessible to all parties, would be a valid objection to the jurisdiction of the Court.
15. The amount of costs of Ksh.7,745,453.40 involved in the present application is substantial as may reasonably be expected to occasion the respondent a substantial loss, within the meaning of Order 42



Rule 6 of the Civil Procedure Rules, if there be merit in the objection as to the amount taxed and, therefore, the respondent's objection to the taxation ought to be heard on the merits. The prejudice in prolonged default of the client to pay advocates' fees is in the expeditious hearing and determination of the objection on taxation.

16. The justice of the case is that pending the hearing and determination by the judge of the Reference from the taxing master's decision on taxation, the execution of the ruling on taxation of costs should be stayed to prevent the Reference, if eventually successful, from being rendered nugatory.

Orders

17. Accordingly, for the reasons set out above, the Court finds merit in the application for enlargement of time to file a reference from the decision of the taxing master delivered on 21/5/2025.
18. The time prescribed for filing of a reference to the Judge from a taxing Master's taxation of costs is enlarged and the Reference from taxation of the Bill of Costs dated 5/6/2025 is deemed to be properly filed and served upon payment of requisite fees. The reference shall be heard on a date to be fixed in consultation with the Counsel for the parties.
19. There shall be a stay of execution of the order on taxed costs pending hearing and determination of the Reference. The applicant shall secure the payment of monies eventually adjudged due from them by a guarantee from a reputable bank for the sum of costs certified by the Court's taxing officer at Ksh.7,745, 453.40.
20. Costs of the application shall be paid by the 3rd respondent applicant in terms of Order 50 Rule 6 of the Civil Procedure Rules.

Order accordingly.

DATED AND DELIVERED THIS 24TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Ochieng for the 3rd Respondent/Applicant.

Mr. Kigen for the Respondent/Advocate.

