



Kiama Wangai & Co. Advocates v Kenya Nutritionists and Dietitians Institute (Miscellaneous Application E029 of 2023) [2025] KEELRC 2570 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2570 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION E029 OF 2023**

**M MBARŪ, J
SEPTEMBER 25, 2025**

BETWEEN

KIAMA WANGAI & CO. ADVOCATES APPLICANT

AND

KENYA NUTRITIONISTS AND DIETITIANS INSTITUTE RESPONDENT

RULING

1. The ruling herein relates to two applications dated 24 March 2025 and 3 June 2025.
2. The application dated 24 March 2025 is filed by Kiama Wangai & Co. Advocates, premised on the provisions of Order 51 (2) of the *Advocates Act*, Order 7 of the Advocates (Remuneration Order), Order 50, Rule 1 of the Civil Procedure Rules, seeking:
 - a. Judgment be entered for the advocate/applicant as against the client/respondent for the sum of Ksh 6. 656,744.10 being certified costs due to the advocate/applicant.
 - b. The respondent do pay to the applicant interest on the certified costs at the rate of 14% per annum form 17 October 2024 until payment in full.
 - c. The respondents do pay to the advocate/applicant the costs of this application.
3. The application is supported by the affidavit of Prof. Kiama Wangai, Advocate, who practices in the name and style of Kiama Wangai & Co. Advocates. He avers that he was instructed by the respondent/client in Mombasa ELRC Cause No. 504 of 2018, where he attended. He taxed his bill of costs dated 5 April 2024 and ruling delivered on 17 October 2024 by the Deputy Registrar. The respondent has made no payment for the expenses taxed of Ksh 6. 656,744.10 since the delivery of the ruling and the same is due with interest at 14%.
4. In reply, the respondent, Kenya Nutritionists and Dietitians Institute, filed the Replying Affidavit of Dr David Okeyo, chief executive officer, who avers that on 24 April 2025, the Deputy Registrar of the



court listed the matter for hearing on 5 June 2025. Unknown to the respondent, the applicant, as the legal representative, had filed an application dated 24 March 2025 seeking judgment considering that no reference had been filed challenging the Certificate of Costs issued on 17 October 2024 in ELRC Misc. Application No. E029 of 2023.

5. The respondent was not aware of the application and the Bill of Costs, and that the Taxing Master had already taxed it and issued the Certificate of Costs.
6. The respondent paid all sums due to the applicant when due. There was overpayment. No invoice was issued seeking payment at the time he applied to cease acting for the respondent on 3 November 2021.
7. Dr Okeyo avers that due to miscommunication and lack of notice, the respondent was unable to file submissions to the taxation within the prescribed time. The applicant is being opportunistic after he heard that the claimants were successful in the case against the respondent. Yet, it was due to his negligence that the judgment awarded costs for failure to attend the hearing.
8. The applicant abandoned his work; hence, he is not entitled to any additional costs. The respondent had to look for funds to ensure an Order of Mandamus was instead directed against the Principal Secretary, Ministry of Health, which was not issued in ELRC JR E004 of 2024 to pay the applicant Ksh.176, 088,000 being decretal sum in ELRC Cause No. 504 of 2018 plus costs of Ksh.4, 866,116 plus interest at 12% from 1 January 2023.
9. Dr Okeyo avers that the delay in filing the note of objection and reference is not inordinate or deliberate, but has been occasioned by factors beyond the respondent's control and should be excused. Being aggrieved by the Outcome of the Taxation, the respondent is ready and willing to file it and has retained another advocate seeking leave to file the reference out of time. The taxing master has since issued the Certificate of Costs in favour of the application. Still, there is no order pending hearing to extend the time limit for filing a notice of objection and reference.
10. In reply to the instant application, the respondent is urging its Notice of Objections and reference instead of a reply to the application by the applicant. The matters addressed by the respondent are well within the scope of the application dated 3 June 2025.
11. The application is not opposed in any material way.
12. A Bill of Costs has since been taxed, and a valid Certificate of Costs for payment of Ksh 6,656,744.10 remains unpaid.
13. It is common cause that the respondent secured the services of the applicant to attend in defence in Mombasa ELRC Cause No. 504 of 2018.
14. The applicant filed a response on 5 October 2020.
15. For lack of instructions, the applicant applied to cease acting for the respondent.
16. These events resulted in Misc. Application E029 of 2023 by the applicant for the Advocate-Client Bill of Costs through application dated 5 April 2024.
17. The Taxing Master addressed the application and took into account that the respondent was served correctly. The applicant addresses this fact in the Replying Affidavit of Prof. Wangai, who has attached email communications with the respondent/client. These communications, notices to attend, have not been challenged in any material way.
18. The averments by Dr Okeyo that there was no service upon the respondent via communications and responses to the applicant on 1 June, 20324, seeking an update on all pending cases. In contrast,



the applicant had since applied to pursue acting for the respondent, which is proof that there was knowledge of the communication and proper service. The subject of the email communication on 1 June 2024 was the Advocate-Client Bill of Costs of 31 May 2024.

There was proper service.

19. Through a ruling delivered on 17 October 2024, the Taxing Officer taxed the bill at Ksh. 6,654,744.10.
20. Since the application to cease acting was filed, the respondent has taken no action to terminate its engagement with the applicant. Under the Advocates (Remuneration) Order, the applicant was justified in claiming its professional costs. The fact of appointment to act in Mombasa ELRC Cause No. 504 of 2018 is not contested. Arising thereof, the due costs are lawful and legitimate.
21. On application dated 3 June 2025, the respondent, Kenya Nutritionists and Dietitians Institute, is the applicant.
22. The application is premised on the provisions of Section 51 of the *Advocates Act*, paragraph 11(4) of the Advocates (Remuneration) Order, section 1A, AB, 3A, and 95 of the *Civil Procedure Act* and Order 50 Rule 6 of the Civil Procedure Rules. The respondent is seeking;
 1. Spent.
 2. This court be pleased to, on such terms as it thinks just, extend the time limited for giving notice of objection to the taxing officer of the items of taxation to which the respondent/applicant herein objects.
 3. This court be pleased to by Order grant the applicant leave to file a Reference out of time against the Certificate of Costs arising from Ruling delivered on 17 October 2024.
 4. The applicant be granted leave to file and serve Reference within 14 days from the date of this court Order.
 5. Pending the hearing and determination of the intended reference, the court be pleased to grant stay of execution of the Certificate of Costs dated 12 May 2025 arising from the ruling delivered on 17 October 2024.
 6. The objection to the Taxing Officer and Application for Reference annexed hereto be deemed as the duly filed and served upon the payment of the requisite fees.
 7. The costs of this application will be in the cause.
23. The application is supported by Dr David Okeyo, the Chief Executive Officer, through his Affidavit. He avers that on 24 April 2025, the respondent received notice from the Deputy Registrar that this matter had been listed for hearing of the application dated 24 March 2025 on 5 June 2025. Unknown to the respondent, the applicant who was their previous advocate had filed an application on 24 March 2025 seeking judgment because no reference had been filed challenging the Certificate of Costs issued on 17 October 2024 in Misc. Application No. E029 of 2023.
24. Dr Okeyo states that the respondent has always paid all fees owed to the applicant. No invoices are outstanding. The applicant ceased acting for the respondent on 3 November 2021, and the respondent was unaware of any pending payments or that there was a pending application.
25. Due to miscommunication and lack of notice, the respondent was unable to file submissions during the taxation process or to provide notice indicating its objections to the Certificate of Costs or a Reference within the prescribed time. The applicant is being opportunistic after hearing that the claimants were



successful in the case against the respondent. Yet, it was due to the applicant's negligence that the court directed the respondent to pay costs. The applicant abandoned his work midway and is thus not entitled to additional fees from the respondent, who had to seek funds to ensure an order of Mandamus was instead directed to the Principal Secretary, Ministry of Health, in ELRC JR E004 of 2024, to pay Ksh.176, 088,000; the decretal sum in Mombasa ELRC Cause No.504 of 2018; together with costs of Ksh.4, 866,116.

26. Dr Okeyo asserts that the delay in filing the notice of objection and reference is not unreasonable or deliberate but caused by factors beyond the control of the respondent, as the applicant, and is therefore excusable. The respondent is dissatisfied with the outcome of the taxation and is prepared to file objections once leave is granted. The taxation officer has issued the Certificate of Costs in favour of the applicant, and there is no order for execution.
27. No prejudice will arise to the applicant if the orders ought to be granted. The respondent has the right to access justice and may only receive protection from the court.
28. In reply, the applicant submitted the Replying Affidavit of Prof. Kiama Wangai, Advocate, who states that instructions were issued to the applicant by the respondent on 2 January 2021 and that the applicant attended diligently. Afterwards, no further instructions were received. He applied to cease acting, which was served. Subsequently, the claimants served the respondent directly with hearing notices. The respondent failed to instruct an advocate to attend the matter, and therefore, the hearing proceeded without legal representation.
29. Prof. Wangai affirms that an Advocate-Client relation exists, as admitted by the respondent. The assertion that the respondent only became aware of ELRC Misc. Application No. E029 of 2023 on 24 April 2025 is incorrect, as there is evidence of service and returns thereof. The respondent's allegations that it was not informed or served with the Bill of Costs or hearing notices are false. Service was effected on 5 April and 31 May 2024.

The respondent replied to the service on 1 June 2024 and requested an update on the pending matters.
30. There is an acknowledgement of service from the chief executive officer and the respondent. However, there was no attendance in court. The Taxing Officer was satisfied that there was proper service and hence taxed the bill; a Certificate of Costs has since been issued.
31. The respondent filed the Further Affidavit of Dr Okeyo, who states that a fiduciary relationship existed between the parties. Therefore, the applicant should have acted in the best interests of the client, including providing general care in handling the matter with timely updates. However, he failed to do so. Due to the negligence of the applicant's advocate, the respondent was ordered to pay costs for failing to attend court. By abandoning the proceedings halfway, the respondent was unable to file submissions during taxation, a notice indicating its objections, or a reference within the prescribed time.
32. Should the court allow the respondent to file a Notice of Objection and Reference out of time?
33. The subject ruling was delivered on 17 October 2024.
34. The 14 days permitted to file a reference have now expired.
35. Paragraphs 11 (1) & (2) of the Advocates (Remuneration) Order 1962 provide that:
 - (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. 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.
36. The respondent's case is that no Notice of Objections was filed in time because there was no service of the taxation. This is addressed above with a finding that there was proper service.
37. The other issue raised by the respondent is that there was no reference file in time due to events beyond their control. These events are not specified except to emphasize the right to access justice and the likelihood of prejudice. However, for the court to exercise its discretion under section 95 of the *Civil Procedure Act*, an applicant, as in this case, must present and argue their case, providing all relevant facts that explain their inability to attend and address the matter promptly, claiming that there were circumstances beyond the respondent's control after being served with the taxation and engaging the applicant at length to be informed about the status of various pending matters in court is to fail to take responsibility.
38. In *Andrew Shisala Angalushi v Zephenia K. Yego & Ayinga Asiligwa Chanzu* [2020] KEHC 5165 (KLR), the court considered a similar application. It held that the discretionary power of the courts to extend the time required for the performance of an action must be based on a good foundation. It must be demonstrated that the delay was not intentional and is well-explained. Relevant considerations are addressed in *Miller & Company Advocates v China Roads & Bridge Corporation* (Miscellaneous Application 168 of 2019) [2021] KEHC 408 (KLR) (Commercial and Tax) and *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR.
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-by-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.
39. Ultimately, the application dated 3 June 2025 was filed in response to the application dated 24 March 2025. This came in too late in the day. It cannot apply to rescue the eventuality of its dismissal.
40. Accordingly, the application dated 24 March 2025 is allowed as prayed. Judgment is entered for the applicant against the respondent for payment of Ksh. 6,656,744.10 being certified costs due to the advocate, save that the interests shall be at court rates from 17 October 2024. Costs for these proceedings are awarded.
41. The application dated 3 June 2025 is without merit and is dismissed with costs to the applicant.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 25TH DAY OF SEPTEMBER 2025.

M. MBARŪ



JUDGE

In the presence of:

Court Assistant: Japhet

..... and

