



Kung'u & 2 others v Prof Tom Ojienda & Associates (Miscellaneous Application E028 of 2024) [2025] KEHC 13752 (KLR) (Family) (22 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13752 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E028 OF 2024
CJ KENDAGOR, J
SEPTEMBER 22, 2025**

BETWEEN

**NAOMI NYAMBURA KUNG'U 1ST APPLICANT
RAHAB WAMUCII KUNG'U 2ND APPLICANT
BILHA WANJIKU KUNG'U 3RD APPLICANT**

AND

PROF TOM OJIENDA & ASSOCIATES RESPONDENT

RULING

1. The background of this matter is a contested advocate-client bill of costs. This court delivered a ruling in the instant matter on 16th December 2024, setting aside the taxation done by the taxing master and remitting it for re-taxation.
2. The 1st, 2nd and 3rd Applicants herein filed the application dated 21st January, 2025 seeking the following orders:
 - a. That the Honourable Court be pleased and does hereby certify the instant application as urgent and one to be heard on priority;
 - b. That the Honourable Court be pleased and does hereby grant leave to the 1st, 2nd and 3rd Applicants herein to file an appeal on part of the Ruling and decision issued by the Honourable Lady Justice C. Kendagor on 16th December, 2024;
 - c. That the Honourable Court be pleased and does hereby extend the time to allow the Applicant herein to file an application for leave to file an appeal on part of the decision of the Honourable Court;



- d. That costs in the application be provided.
3. The summary of the prayers sought is an extension of time and leave to appeal.
 4. The Respondent opposes the application and filed a replying affidavit in response. The respondent contends that the applicants have not demonstrated or justified any plausible reasons to warrant the court's discretion in granting an extension of time to seek leave to appeal. Further, the Respondent asserts that the applicants are indolent and only became active upon realizing that the re-taxation date was imminent, which prompted them to file the present application in an attempt to delay justice in this matter.
 5. The issues for determination are two-fold:
 - a. Whether the Applicants have met the threshold for the extension of time to appeal?
 - b. Whether the Applicants should be granted leave to appeal?

Whether applicants have met threshold for extension of time to appeal?

6. The *Advocates Act*, the Advocates Remuneration Order at Rule 11 provides as follows:
 - i. 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;
 - ii. 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 (14) 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;
 - iii. The High Court shall have power in its discretion by order to enlarge the time fixed by sub paragraph (1) or sub paragraph (2) for the taxing of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party no 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 lapsed.
7. The Civil Procedure Rules at Order 43 Rule (3) while outlining the question of seeking leave to appeal from the High Court provides as follows:

“An application for leave to appeal under Section 75 of the Act shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order.”
8. Section 95 of the *Civil Procedure Act* provides as follows:

“Where any period is fixed or granted by the court for doing any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”



9. Subsequently, the principles of granting extension of time were also discussed by the Court of Appeal in the case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2EA 231 as cited in *Omar Shurie v Marian Rashe Yafar* (Civil Application No. 107 of 2020) UR where it was held:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

10. The Ruling was delivered on 16th December, 2024. The application was filed on 21st January, 2025. The time period between 16th December, 2024 and 21st January, 2025 is equal to about 37 calendar days.
11. The applicant has invoked the High Court (Organization & Administration) Rules, High Court Recess gazetted in Gazette Notice No. 13190 of 2024 for the period between 21st December, 2024 and 13th January, 2025. A period of 24 calendar days.
12. Order 50 Rule 4 of the Civil Procedure Rules provides as follows:

“Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty first day of December in any year and thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act;

Provided that this rule shall not apply to any application in respect of a temporary injunction.”

13. Given that the period from 21st December to 13th January of the following year is not to be included in the calculation of time, the application for leave was filed within 12 days of the ruling. The applicant was therefore not out of time.

Whether the applicants should be granted leave to appeal

14. In *Kenya Shell Limited v Kobil Petroleum Limited* [2006] eKLR, The Court of Appeal held:

“Whether or not the court would grant leave to appeal is a matter for the discretion of the court. As in all discretions exercisable by courts, however, it has to be judicially considered.”

15. The Court in *Wambugu Kariuki & Associates v Invesco Insurance Company Limited* [2018] eKLR, stated as follows;

“I have considered the application, Rule 11 (3) of the Advocates (Remuneration) Order requires a party to obtain leave from the Judge to appeal against the ruling on the taxation of the bill of costs. The court is called upon to exercise discretion. The discretion of the Court must be exercised fairly and judiciously in the interest of justice. This is more so because a party is at the mercy of the court as what he seeks from the Court is not available as of right. One of the considerations a Court has is whether the adverse party would be prejudiced and



whether a just cause has been shown by the applicant to deserve the exercise of the Courts discretion.”

16. The Applicants herein have attached to the instant Application a draft Notice of Appeal and a draft Memorandum of Appeal. In the Memorandum of Appeal, the Applicants considers the following issues for determination by the Court of Appeal:-
 - a. The Honourable Court erred in law in its holding that the Notice of Preliminary Objection dated 31st July, 2024 was not merited;
 - b. The Honourable Court erred in law and fact when it considered new facts at appeal as relates to the replying affidavit to the Preliminary Objection dated 23rd September, 2024 and filed on the 15th December, 2024;
 - c. The Honourable Court erred in law and in fact when it held that the determination on the valuation of the subject matter for taxation of the suit relates to the entire estate and not on the determination of the estate due to the applicants as per the consent dated 17th October, 2017.
17. The Applicant has questioned the jurisdiction of both the Taxing Master and this Court to decide any issues regarding the Bill of Costs, emphasizing this point in the draft Memorandum of Appeal. They also contested that the Bill of Costs was filed six years after the completion of the matters, that the matter was settled by consent, and they challenged the valuation of the subject matters.
18. The issues were dealt with by this court, but that does not dismiss the fact that there are arguable issues that merit serious judicial consideration by a party who wishes to proceed further on appeal.
19. The issue of costs for an Advocate is a crucial and significant matter; it cannot be said that they will not suffer prejudice if any delay affects this right. The court is also mindful of this, and because there is no stay, exercising discretion in favour of the Applicants will not prejudice them at this stage. The Applicants and Respondent will both have the opportunity to raise their arguments on appeal.
20. I am persuaded that the Applicants have made out a case that justifies the exercise of the Court’s discretion in their favour.
21. Accordingly, leave to appeal is granted. The Appeal to be filed within 14 days.
22. The costs of the application are awarded to the Respondent.

Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 22ND DAY OF SEPTEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Omwanza Nyamweya, Advocate for the Applicants

Mr. Odayo, Advocate holding brief for Ms. Msando, Advocate for the Respondent

