



Nirenstein v Oyomba Mosota & Mamwea Advocates (Miscellaneous Civil Application E009 of 2024) [2025] KEHC 14166 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEHC 14166 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CIVIL APPLICATION E009 OF 2024
CM KARIUKI, J
SEPTEMBER 30, 2025**

BETWEEN

MICHELE S NIRENSTEIN APPLICANT

AND

OYOMBA MOSOTA & MAMWEA ADVOCATES RESPONDENT

RULING

1. The Advocate/Respondent filed an ex parte application seeking orders.
 - i. That this Application be certified urgent, and orders sought herein be granted in the first instance.
 - ii. That the Honorable Court be pleased to enter judgment for the Applicant against the Respondent for the sum of Kshs. 12,785,484.73/= as awarded on the Certificate of taxation dated 28th January 2025.
 - iii. That the Honorable Court be pleased to award interest on Kshs. 12,785,484.73/= from the date of the taxation until payment in full.
 - iv. That a decree do issue accordingly for execution.
 - v. That the costs of this application be provided for.
- b. The Honourable Court, when the Application was placed before it for Exparte directions on 17th March 2025, proceeded to determine the application in entirety. Upon being served with the orders, the Applicant made an application dated 25th March 2025 seeking orders;
 - i. That this Application be certified urgent and orders sought herein be granted in the first instance.



- ii. That pending the hearing and determination of this Application inter partes, the Honourable Court be pleased to stay the orders of 19th March 2025;
 - iii. That the Honourable Court be pleased to set aside the orders issued against the applicant dated 19th March 2025;
 - iv. That the Honourable Court hears and determines the Applicant's reference application dated 5th February 2025 opposing the sum of Kshs. 12,785,484.73 that was erroneously awarded to the Respondent by the Honourable taxing officer dated 28th January 2025; and
 - v. That costs of the application be provided for.
- c. Respondents further filed a Response vide a Replying affidavit to the Applicant's Application dated 7th April 2025.
- d. The circumstances leading to the issuance of the Order dated 19th March 2025, which the Applicant seeks to have stayed are as follows:
2. The advocates lodged an Advocate-client bill of costs dated 12th June 2024 pursuant to the Advocate-client relationship that existed between the Client/Applicant and the Advocates/Respondent in the conduct of Narok High Court Civil Case NO. E003 of 2024. The said Advocate-client bill of costs was taxed by the taxing officer, who upon considering the submissions of the parties, assessed the same in the sum of Kshs. 12,785,484.73/=. This is demonstrated by the certificate of taxation dated 28th January 2025 issued by this Court. Upon delivery of the ruling of the taxing officer, the Client/Applicant was duly granted thirty (30) days stay of execution by the Court. The Advocate/Client did not take any steps in this matter during the 30-day stay period ordered by the Court.
 3. The Client/Applicant did not take any steps to file a formal application for stay of execution. The Client/Applicant also failed to take any steps to settle or pay the taxed amount. Despite of filing a reference application, the Client/Applicant did not prosecute the said application challenging the assessment.
 4. After the lapse of the 30-days stay of execution ordered by the taxing officer, and there being no order for the extension of the order for stay, the Advocate/Respondent being within his right to move the Court made a notice of motion application dated 17th March 2025 for entry of judgment and decree for the amount awarded by the taxing master.
 5. The applicant /client application was directed to be heard via submissions.
 6. Applicant submissions
 7. That the application ought to have been heard inter-partes and not ex-partes. According to the rules depicted in the Civil procedure Rules, in the interest of justice, all applications filed in Court, unless the provided otherwise, ought to be prosecuted inter-partes with the aim of meeting the provisions of article 50 of *the Constitution* of Kenya, 2010. Reliance made on Article 50 (1) of *the Constitution* of Kenya, Halsbury Laws of England, 5th Edition 2010 Vol. 61 at para 639, JMK v MWM & Another Civil Appeal No. 15 of 2015 (2015) eKLR, Catherine Chepkemai Mukenyang v Evanson Pkemei Lomaduny & another [2022] eKLR, CA No. 178 of 2002 Between Kiai Mbaki & 2 Others And Gichuhi Macharia & Another, Prime Salt Works Ltd. –vs- Kenya Industrial Plastics Ltd. [2001] 2 E.A. 528, David Mulei Mbuvi & 13 others V The Registrar General at 2 others (2012) eKLR,.



8. It is further submitted that, The Respondent's claimed that their application ought to have been heard ex parte as it is a procedural process, however, regardless of their unsupported opinion, there is no law whatsoever that actually provides that such an application is an "administrative process" and that due to the fact that it is a procedural process, as they claim, then it ought to be heard ex-parte. As hereinabove succinctly provided by the Court of Appeal, unless there is express provision for the disregard of the sacrosanct principles of Natural justice, the right to be heard must always be accorded to every party.
9. Further, the application for certificate of taxation is actually an inter parte application and not an ex - parte application reliance made on inter alia; Tom Ojienda & Associates v National Land Commission [2025] KEHC 4531 (KLR), Amondi & Co Advocates v County Government of Kisumu [2022] KEHC 1070 (KLR), Lubullellah & Associates Advocates v N K Brothers Limited [2014] KEHC 8685 (KLR), Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited [2012] KEHC 4274 (klr) and Kalonzo Musyoka & Paul M. Wambua (Practicing As Musyoka & Wambua, Advocates) v Rustam Hira (Practicing as Rustam Hira, Advocate) [2006] KEHC 3078 (KLR).
10. In sum it is submitted that, as such, due to the fact that the orders were granted ex-parte, it is crystal clear that the orders are not only unfair but a breach of the Applicant's fundamental rights and freedoms as envisaged by Articles 25 (c), 47 (1) & (2), 50 of the Kenyan Constitution and as such null and void ab initio.
11. The advocate/Respondent submissions
12. The Client's/Applicant's assertion that the Respondent's Application dated 17th March 2025 which led to the issuance of the Orders dated 19th March 2025 ought to have been heard inter parties is misplaced because this being a procedural process, the Court had discretion to determine the same ex-parte in the interests of justice and expeditious resolution of disputes.
 - i. Justice in this case required the Court to allow the Advocate/Respondent's application for the judgment and decree given the Client/Applicant's inaction and lack of interest in prosecuting her reference application. The Client/Applicant who went into deep slumber following the ruling of the taxing officer only woke up after the Advocate/Respondent filed the application for judgment and decree pursuant to the certificate of costs. The Advocate submits that had they not filed the Application; the Client/Applicant would not have taken any action on this matter. The maxim that Equity aids the vigilant and not the indolent. Delay defaults equity and equity always refuse to aid stale delay. Reliance made on In Ibrahim Mungara Mwangi v Francis Ndegwa Mwangi [2014] eKLR and Snell's Equity by 3ohn MC Ghee Q.C. (31st Edition) at page 99. In this case it is not in doubt that the Client/Applicant failed to aid the court in the administration of Justice thus the only issue pending was for this Honourable court to adopt the Certificate of Costs/Taxation and enter judgement in favour of the Advocates as against the Clients.
13. Issues And Determination
14. After going through the record, parties' submissions, cited legal frameworks, I find the fundamental question is on issue of service which is a core element of fair trial under Articles 25 (unlimited) and 50 COK, 2010. The advocate/respondent admits application was not served however he goes ahead to justify that it is not neither necessary nor a requirement of the law. Articles 25 (c), 47 (1) & (2), 50 of the Kenyan Constitutions interpreted in a galaxy of caselaw are of the contrary view. In the interest of justice, all applications filed in Court, unless provided otherwise, ought to be prosecuted inter-parte with the aim of meeting the provisions of article 50 of *the Constitution* of Kenya, 2010. The court is



not persuaded by the maxim that Equity aids the vigilant and not the indolent to the extent that it abrogates the absolute right of fair trial under Article 25 COK,2010.

15. The Respondent is claiming that the Applicant lacked interest in prosecuting her matter or that there is undue delay, but court has gathered from the record not only had the Applicant written to Court to seek directions on a hearing date to prosecute the matter, but also, only 5 weeks had passed since the claim had been brought forth to the Honourable Court, which is little time to warrant a claim of inordinate delay or lack of interest thereof.
16. The facts of the case are clear and evident that the matter had just been presented to the Honourable Court on 5th February 2025 and directions were requested on 6th February 2025 vide the letter addressed to the Deputy Registrar. The Respondent filed their application that disregarded the Applicant's Reference Application on 17th March 2025, the ex-parte orders they were seeking were granted on the 19th March 2025. Thus court agrees with applicant that, the fact that the orders were granted ex-parte, is clear that the orders are unfair based on the series of events portrayed in the analysis of the issue, and that there was no indolence on the part of the Applicant.
17. The various allegations stated by the respondent have not been supported by any evidence to prove them and, the condition that the Applicant ought to offer or propose any form of security for the due performance of the decree as required under the law, is inapplicable in the circumstances of this case. Thus, the court makes the orders;
 - I. That the Court hereby sets aside the orders issued against the applicant dated 19th March 2025.
 - II. That the Court shall hear and determine the Applicant's reference application dated 8th February 2025 opposing the sum of Kshs. 12,785,484.73 that was awarded to the Respondent by the taxing officer dated 28th January 2025; and
 - III. The costs of the application are to be in reference.

DATED AND DELIVERED VIA MICROSOFT TEAMS IN NAROK THIS 30TH SEPTEMBER, 2025.

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CHARLES KARIUKI

JUDGE

