



**Mbugua (Suing as an Administrator of the Estate of Joseph Kiarie Mbugua, Deceased) v Mburu
(Environment & Land Case 1346 of 2016) [2025] KEELC 4407 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4407 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1346 OF 2016**

**JG KEMEI, J
JUNE 12, 2025**

BETWEEN

**FLORENCE WAIRIMU MBUGUA PLAINTIFF
SUING AS AN ADMINISTRATOR OF THE ESTATE OF JOSEPH KIARIE
MBUGUA, DECEASED**

AND

JOSEPH KWERI MBURU DEFENDANT

RULING

(In respect of the Plaintiff's Application Dated 6/5/2024)

1. The Ruling herein relates to the Application dated the 6/5/2024 filed by the Plaintiff/Applicant expressed to be brought under Order 42 Rule 32 and Order 51 of the [Civil Procedure Rules](#), Section 1A, 1B, 3, 3A, 63 (e) and 79G of the [Civil Procedure Act](#) seeking the following reliefs;
 - a. Spent;
 - b. That this Honourable Court be pleased to grant stay of execution of the orders emanating from the Ruling of the Deputy Registrar dated 16/01/2024 regarding the Respondent's Bill of Costs dated 16/3/2023, pending the hearing and determination of this Application and Reference herein.
 - c. That this Honourable Court be pleased to extend time for filing of this Reference against the Ruling of Honourable Vincent Kiplagat (DR) delivered on the 16/01/2024 in ELC Case No. 1346 of 2016.
 - d. That the Applicant's Reference being Miscellaneous (Reference) Application No. E084 of 2024 and dated 30/04/2024 be admitted by this Honourable Court as duly filed and served.



- e. That the costs of this Application be provided for.
2. The application is premised and anchored on various grounds which have been stated in the body of the said application thereof. The application is further supported by the supporting affidavit sworn by Lawrence Muriithi Mbabu, on even date. The Advocate avers that on 16/01/2024, they logged in court virtually in the morning but were informed that the Ruling was to be delivered in the afternoon. That their attempt to log in at 2.00 p.m. bore no fruits as they waited in the lobby the whole afternoon. He deposes that the Advocate was not aware of the taxation until the 8/04/2024 when the Respondent's Advocate called his office to inform them that the Ruling was delivered on 16/01/2024.
 3. The Advocate avers that being aggrieved by the said Ruling, the Applicant instructed them to file the Reference. It is then that they wrote the Letter dated 9/04/2024 addressed to the Deputy Registrar seeking for certified copies of the Ruling and the reasons for the Taxing Master's decision. He states that the reasons for the Reference were supplied to them on 8/4/2024 but on perusal, the Applicant realized that the Ruling contained a global sum of Kshs. 2,933,466.66. There were no reasons attached to the said Ruling.
 4. Counsel avers that the Applicant has since filed the annexed Reference although outside the prescribed 14 days' period hence she prays for leave to file the Reference out of time and the Reference filed herein be deemed to be duly filed.

The Defendant/ Respondent Replying Affidavit

5. The application was opposed by the Defendant/Respondent vide the Replying Affidavit of Henry Mung'athia Narangwi, the Defendant's Advocate, sworn on 11/06/2024. Counsel avers that on 23/10/2023, the Respondent filed a Party and Party Bill of Costs dated 16/03/2023. That direction on the Bill were issued on 27/09/2023 where parties were directed to file their respective submissions. That the matter was slated for taxation on 9/11/2023.
6. The deponent avers that the Respondent complied with the court's directions and filed his submission on 23/10/2023. That the Court then issued a Ruling date of 5/12/2023 when the matter came up for taxation on 9/11/2023 in the presence of the Applicant's Advocate. He states that the Applicant's Advocate did not indicate that they needed more time to file any other documents. That the Ruling was deferred thrice, more specifically on 5/12/2023, 14/12/2023 and finally on 16/01/2024. That the Applicant did not attend court despite being aware of the Ruling date.
7. Counsel contends that the Reference is an afterthought intended to frustrate the Defendant/ Respondent from enjoying the fruits of the judgement. Further that the Applicant has not given sufficient reasons to warrant the court to exercise its discretion. He argues that the Reference does not demonstrate any chances of success as all issues raised therein were extensively addressed by the Taxing Master in His Ruling.
8. He asserts that there has been inordinate delay in filing the application as the Applicant waited for close to Four (4) months to file the instant application despite being aware of the Ruling date. He therefore prays that the application be dismissed with costs as the Applicant has been indolent in pursuing the Reference.
9. The court directed that the application be canvassed by way of written submissions. Both parties complied. The Applicant filed submissions dated 26/03/2025 whereas the Defendant/ Respondent's submissions are dated 23/01/2025. The Court has had a chance to read though the submissions and considered them in its decision.



Analysis and Determination

10. Having carefully considered the application herein, the response by the Advocate and the submissions by the parties, the court is of the view that the issues falling for determination in this matter are: -
- a. Whether the application has been brought under the right provisions of the law.
 - b. Whether there has been inordinate delay on the part of the Applicant in bringing the application before the court.
 - c. Whether the Applicant has sufficiently explained the delay to entitle her to an order of enlargement of time to file a reference out of time.
 - d. Whether the applicant has an arguable reference.
 - e. Subject to the finding in (c) and (d) above, whether there should be a stay of execution of Ruling of the Taxing Master pending the hearing and determination of the intended Reference.

A. Whether the application has been brought under the right provisions of the Law

11. The application herein has been brought under the provisions of Order 42 Rule 32 and Order 51 of the *Civil Procedure Rules*, Section 1A, 1B, 3, 3A, 63 (e) and 79G of the *Civil Procedure Act*. The legal framework on extension of time in matters of advocate-clients bills of costs is clearly stipulated under Part 1 paragraph 11 of the *Advocates Remuneration Order* which provides:
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 subparagraph (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." (emphasis mine).
12. That is the only legal provision that the Plaintiff/Applicant herein needed to have based her application on without invoking the provisions of the *Civil Procedure Act* and the *Rules*. In the case of *Hezekiel Oira t/a Oira Advocates –vs- Kenya Broadcasting Corporation* (2015) eKLR, the court stated as follows: -

“...the applicant cannot invoke the *Civil Procedure Act* and Rules made thereunder to circumvent the procedure provided under the *Advocates Act* and the Advocates Remuneration Order in regard to review of a decision of the taxing officer in an advocate/



Client bill of costs where the taxing officer exercises the special jurisdiction conferred upon him or her under the Advocates Remuneration Order and NOT in his capacity as the Deputy Registrar of this court.”

13. Similarly, the Court of Appeal in *Machira & Company Advocate –vs- Arthur K. Magugu* (2012) eKLR in this regard stated that:

“Appeals require the typing of proceedings compiling of records of appeal and hearing of the same in open court. Reviews, however, would require provisions akin to those of Section 80 of the *Civil Procedure Act*, of discovery of new and important matters, errors on the face of the record and so on. In our view, the Rules committee intended to avoid all that and provide for a simple and expeditious mode of dealing with the decisions on advocates bill of costs through references under Rule 11 to a judge in chambers.”

14. The Court further held that:

“The appellate jurisdiction of any court is a creature of the statute and has to be exercised in accordance with the provisions of the statute creating it. With regard to the advocates bills of costs, we agree with the decision of Ringera J (as he then was) in *Machira vs Magugu* that the Advocates Remuneration Order is a complete code which does not provide for appeals from the taxing master’s decisions. Rule 11 thereof provides for ventilation of grievances from such decisions through references to a judge in chambers. The effect may be viewed as an appeal or a review but these being legal terms in respect of which different considerations apply, they should not be loosely used....”

15. It would have been sufficient therefore for the Applicant to have based her application only on the provisions of the *Advocates Remuneration Order, 2014*. The Advocates Remuneration Order is a complete code on matters of Party-Party Bill of costs. It is not fatal for the Applicant to cite other provisions of the law like the *Civil Procedure Act* and Rules; however, they add no value to the application.

16. That notwithstanding, this court holds that the application is not fatal and is therefore for consideration on merit.

B. Whether there has been inordinate delay on the part of the Applicant in bringing the application before the court

17. The court in the case of *Mwangi S. Kimenyi –vs- Attorney General and Another* [2014] eKLR correctly observed that what constitutes ‘inordinate delay’ is dependent on the particular circumstances of each case. It stated that:

“There is no precise measure of what amounts to inordinate delay. Inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable. Caution is, however advised (sic) for the courts not to take the word “inordinate” in its ordinary dictionary meaning but to apply it in the sense of excessive as compared to normality.....see case of *Allen –vs- Alfred McAlphine & Sons* [1968]1 All ER 543 where a delay of fourteen (14) years was considered inordinate and inexcusable. But see also the cases of *Agip (Kenya) Limited –vs-*



Highlands Tyres Limited [2001] KLR 630 and *Sagoo –vs- Bahari* [1990] KLR 456 where delays of eight months and five months respectively was not considered to be inordinate and also ELC Case No. 2058 of 2007 where delay of about 1½ years was considered not to be inordinate.”

18. I concur with the decision of the court cited above. It all depends on the circumstances of each case. In this particular case, the Party –Party Bill of Costs was taxed on 16/01/2023. This application was brought on 6th May, 2024, 4 months thereafter. This by all standards, is inordinate delay.

C. Whether the Applicant has sufficiently explained the delay to entitle her to an order of enlargement of time to file the intended reference out of time

19. In the case of *County Executive of Kisumu vs County Government of Kisumu & 8 others* [2017] eKLR the Supreme Court defined the principles that a Court should consider in exercising its discretion to extend time as follows:
- a. 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;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;”
20. The earlier case of *Mugo and others –vs- Wanjiru and Another* [1970] EA 484 had also discussed the considerations to be made in extension of time where President Duff J, stated that:

“ Each application must be decided in the particular circumstances of each case but as a general rule, the applicant must satisfactorily explain the reason for the delay and should also satisfy the court as to whether or not there will be a denial of justice by the refusal of granting the application.”

21. In this case, the Applicant’s aver that they logged in to the virtual court and waited in the lobby on 5/12/2023 but they were not admitted. The Applicant’s Counsel avers that they were not aware when the Ruling was delivered until 8/4/2024 when they were informed by the Respondent’s Counsel that the Ruling had been delivered. From the Respondent’s Replying Affidavit, the Ruling was deferred from 5/12/2023 to 14/12/2023 and then to 16/01/2024.
22. Although the Respondent alleges that the Applicant’s Advocate was aware of the Ruling date, there is no Affidavit of Service on record confirming that they were informed of the date. In my view and considering the circumstances of this case, I find that the applicant has offered a reasonable explanation in the circumstances.

D. Whether the Applicant has an arguable reference

23. The second aspect that the court needs to consider in addition to the explanation for inordinate delay is whether the Applicant has an arguable reference. I have perused the Reference. The Applicant contends inter alia; that Taxing Master failed to consider the scale of the prescribed under Schedule 6



of the *Advocate (Remuneration) Order 2014* in awarding an amount that is high without giving any reasonable justification. That the Taxing Master erred in failing to state the reasons for awarding the amount.

24. I have perused the Ruling delivered by the Taxing Master on 19/01/2024. The Taxing Master did not state the reasons for awarding the contested amount. Prima facie, it is therefore my finding that the Applicant has an arguable Reference and whether or not it will succeed is for the court hearing it to make that final call. For now, it suffices that the reference is not an idle din.

E. Whether this matter should be stayed pending the hearing of the pending Reference

25. The principles governing stay of a court's order or decree are now well settled. The principles set out in Order 42 (6) of the *Civil Procedure Rules* shall apply to the present case. In the case of *County Government of Tana River vs Miller & Company Advocates* (2012) eKLR (supra) the court held that the guiding principles for determining whether or not to grant stay orders are: -

- a. Where special circumstances of the case so require.
- b. There is proof of substantial loss that may otherwise result
- c. There is substantial question of law to be adjudicated upon by the appellant court
- d. Where if the stay is not granted, the appeal is successful, would be rendered nugatory.”

26. In the case of *Governors Baloon Safari Limited vs Skyship Company Limited & Another* (2020) eKLR the court held that:

“... having found that the 2nd defendant is entitled to orders for extension of time within which to file reference, it logically follows that the execution for costs that are the subject of the Objection and Reference should be stayed pending the outcome of the Reference.”

27. Having found that the Applicant has given sufficient reasons for the delay in filing the Reference, and having determined that the Reference raises arguable issues, it follows that the Applicant should be given a chance to be heard before execution may proceed.

28. I however note that Judgment on taxation has not been entered after the Certification of taxation for execution to commence. Such Judgment shall not be entered unless and until the Reference is heard and determined. To move to execute before then, would amount to shutting the party out of the process of fair trial, which includes exhaustion of all remedies available to him or her within the law. For this reason, a stay of execution is therefore allowed, if for no other reason but to hold the matters at status quo awaiting the hearing of the pending Reference.

29. Final Orders for Disposal

- a. For the foregoing reasons, the Application dated 6/5/2024 is allowed in terms of prayers b), (c) and (d).
- b. Costs of the application to abide the outcome of the pending reference.

30. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF JUNE, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI



JUDGE

Delivered Online in the presence of:

Ms. Micah HB for Mr. Mbaabu for the Applicant

NA for the Respondent.

CA – Ms. Yvette

