



**Chaudhri & Associates v Registered Trustees of Sheikh Zayed Bin Sultan Al – Nahyan
(Miscellaneous Application E204 of 2022) [2025] KEELC 7276 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7276 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E204 OF 2022**

JG KEMEI, J

OCTOBER 22, 2025

BETWEEN

CHAUDHRI & ASSOCIATES ADVOCATE

AND

**THE REGISTERED TRUSTEES OF SHEIKH ZAYED BIN SULTAN AL –
NAHYAN CLIENT**

*(In respect of the Advocate's application dated
17/1/2025 and the Client's application dated 23/1/2025)*

RULING

1. There are two applications for determination: one dated 17/1/2025 by the Advocate and the other dated 23/1/2025 by the Client.
2. To provide context, a brief summary would be sufficient. The Advocate/Applicant filed an Advocate-Client Bill of Costs dated 23/9/22. By the Ruling dated 19/4/23, the Taxing Master struck out the Bill of Costs on the grounds that there was an agreement regarding fees between the Applicant and the Client/Respondent. Dissatisfied with this decision, the Advocate/Applicant submitted a Reference dated 26/5/23, seeking to set aside the Taxing Officer's decision of 19/4/23, and to have the Bill of Costs referred to a different Taxing Officer for fresh taxation. The Court considered the Reference and issued its Ruling on 11/12/2024.
3. In allowing the Reference, the Court found that there was no valid retainer agreement between the parties involved. The Court held that the Advocate was entitled to tax his Bill of Costs and directed the Taxing Master to proceed with the taxation of the Advocate-Client Bill of Costs dated 23/9/2022 in accordance with the law.



The Advocates application

4. Aggrieved by the said Ruling, the Client filed a Notice of Appeal dated 16/12/2024, expressing its intention to appeal the decision to the Appellate Court. It is this filing that prompted the Advocates' Application. The Advocates' application is based on the provisions of Order 51 Rule 14 of the Civil Procedure Rules as well as Rules 42, 43, and 84 of the Court of Appeal Rules, 2010. The Advocate prays for orders that;
 - a. The Notice of Appeal dated 16/12/2024 and filed by the Respondent be struck out for being defective and an abuse of the court process.
 - b. Costs of this application be borne by the Respondent.
5. The application is based on the merits of the case and is further supported by the Affidavit of Mohamed Ferhan Chaudhri, Advocate, sworn on 17/1/2025. The Advocate states that the Respondent filed a Notice of Appeal on 16/12/2024 against the Ruling delivered on 11/12/2024 by this court. That, pursuant to the provisions of the Advocates Remuneration Order, an appeal from a decision on a Reference arising from taxation does not lie as of right and requires leave of the Court.
6. Counsel argues that at the time of filing the impugned Notice, no leave was sought or obtained as required by law. Therefore, the Notice of Appeal filed therein is defective and void ab initio. The filing of the Notice without leave constitutes an abuse of the court process.

The Client's application

7. The Client's application is dated 23/1/2025 expressed to be anchored on the provisions of Section 1A, 1B & 3A of the Civil Procedure Act and Rule 11(3) & (4) of the Advocates Remuneration Order, 2014. Principally, the Client prays for the following orders;
 - a. That the Applicant be granted leave to appeal to the Court of Appeal against the Ruling delivered by Hon. M.D. Mwangi on 11/12/2024.
 - b. That upon grant of the above the Notice Appeal dated 16/12/2024 be deemed as duly filed.
 - c. That there be stay of proceedings relating to taxation of the Bill of Costs dated 23/9/2022 pending the interpartes hearing and determination of the Appeal.
 - d. Costs of the application.
8. The Client's application is based on the grounds on the face of it and further supported by the Affidavit of Abubakar Hassan Dindia, the Client's Director, sworn on the same date. The deponent states that the Client is aggrieved by the Ruling delivered on 11/12/2024, in which the court ordered that the Bill of Costs be taxed again. The Client then lodged a Notice of Appeal dated 16/12/2024 on the same day against the said Ruling. He states that, under Rule 11 (3) of the Advocate Remuneration Order, an aggrieved party must seek leave before filing an Appeal to the Court of Appeal.
9. The deponent states that this court has the discretion to grant leave to the Applicant to appeal to the Court of Appeal and that, if leave is granted, the Court can order that the Notice of Appeal be deemed as duly filed. He contends that if a stay is not granted, the Bill of Costs may be taxed and costs executed before the final determination of the Application and the Appeal, hence the need for a stay.



The Advocate's Replying Affidavit

10. In response to the Client's application, the Advocate filed a Replying Affidavit sworn by Mohammed Ferhan Chaudhri dated 6/03/2025. The Advocate contends that the Client seeks a stay of proceedings pending the hearing of an appeal that has not been admitted and for which leave has not been granted. He states that a stay of proceedings may only be granted where an appeal has been filed and there is a risk that the appeal may be rendered nugatory. That in the absence of an order granting leave to the appeal, the application is premature and should be dismissed.
11. Counsel further asserts that the Client's behaviour has delayed the progress of the matter and caused unnecessary prejudice to the Respondent. He contends that it is only just that the Advocate be rewarded for the work carried out and services rendered. He urged the Court to dismiss the application with costs.

Court's Direction

12. On 24/6/2025, the Court directed that the application be canvassed through submissions. Parties were directed to submit their respective arguments. The Court has reviewed the submissions and taken them into account in its decision.

Analysis and Determination

13. The court has considered the two applications on record, the replying affidavit in opposition to them, as well as the submissions by the parties. The court is of the view that the issues for determination herein are as follows:
 - a. Whether the court is seized of the requisite jurisdiction to grant leave to appeal to the court of appeal against the decision rendered on the 11/12/2024.
 - b. Whether Leave to appeal should be granted to the Client/Applicant herein
 - c. Whether the court can grant an order of stay of proceedings pending appeal or otherwise.
 - d. Which orders should the Court issue?

Whether the court is seized of the requisite jurisdiction to grant leave to appeal to the court of appeal against the decision rendered on the 11/12/2024.

14. I find it convenient to begin by reproducing the provisions of Paragraph 11 of the Advocates Remuneration Order, which outlines the process for objecting to decisions on taxation and appealing to the Court of Appeal in the following words: -
 - (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.
15. The procedure outlined in Rule 11(3) of the Advocates (Remuneration) Order above states that if a party is dissatisfied with the judge's decision on a Reference, the objector shall, with the leave of the court, appeal to the Court of Appeal.
16. There is no doubt that this court has the necessary jurisdiction to grant leave to appeal to the court of appeal. For clarity, the authority and jurisdiction of this court to grant leave to appeal are statutorily limited.
17. The Court of Appeal in the case of Boit –vs- Kumin; Boit & Another (Interested P[arties) Civil Appeal (Application) E101 of 2021) [2025] KECA 568 (KLR) while discussing the need to seek leave to appeal where an appeal does not lie as of right stated that;
- “Decided cases are generally in agreement that the right to appeal is a statutory right, meaning it must be explicitly provided under a law, and a mere common law right to a suit does not imply a right to appeal. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature, but an appeal for its maintainability must be clearly provided under the law. We are not saying where a statute is silent on whether an appeal lies, an aggrieved party cannot appeal. Conversely, in such a situation an appeal lies, but with the leave of the court...”
18. Arising from the foregoing and taking into account the provisions of Rule 11[3] of the Advocates Remuneration Order, my answer to the first issue is that this court is indeed vested with the authority to grant leave to appeal.

Whether Leave to appeal should be granted to the Client/Applicant herein

19. It is evident from the record that the Client/Applicant did not seek leave to appeal when the Court delivered its Ruling on 11/12/2024. The Client now seeks this Court to grant the said leave. Appeals from this Court to the superior court are commenced by way of a Notice of Appeal. Is there a valid Notice of Appeal before this Court for its consideration?
20. The Client/Applicant has not attached such a Notice to its application. Instead, it attempts to rely on the Notice of Appeal dated 16/12/2024. The said Notice of Appeal was filed without the required leave. The notice of appeal was therefore contrary to the provisions of Rule 11[3] of the Advocates Remuneration Order.
21. It is a settled principle of law that when a person is required to seek leave before filing an appeal, that individual must comply with the law. Such a person cannot respectfully take a shortcut like being sought by the Client in this case.
22. The Supreme Court of Kenya has previously underscored that an Appeal filed without leave is a nullity [void ab initio] and cannot be validated ex-post-facto. In the case of Nicholas Kiptoo Arap Korir Salat –



vs- Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR, the Supreme Court stated as hereunder; -

“By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence.

Consequently, this Court will not accept a document filed out of time without leave of the Court. It is unfortunate that Petition No. 10 of 2014 has been accorded a reference number in this Court’s Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the Court’s perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court’s Record.” (emphasis is mine)

23. The legal position that an appeal filed either out of time or without the requisite leave as ordained under the law cannot be validated was reiterated by the Supreme Court in its subsequent case of County Executive Kisumu County Government v The County Government of Kisumu [2017] eKLR, where the court stated that;

“We are in total agreement with the respondent that an appeal filed in this Court out of time without leave of this Court is irregular and this Court will not invoke such ‘novel’ principles as urged by applicant so as to validate that petition and deem it as properly filed. We buttress this Court’s position in Nicholas Salat when this Court stated thus:

...In his submissions, counsel for the applicant acknowledged having already filed his appeal. He now prays for extension of time and urges that once so granted, the Petition of appeal already filed be deemed to have been duly filed.

What we hear the applicant to a ‘document’ he calls ‘an appeal’ out of time without leave of the Court. Pursuant to rule 33(1) of the Court’s Rules, it is mandatory that an appeal can only be filed within 30 days of filing the notice of appeal. Under rule 53 of the Court’s Rules, this Court Can indeed, extend time. However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires.

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

To file an appeal out of time and seek the Court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence.

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in this Court's Registry. This is irregular as that document is unknown in law and the same should be struck out. Where one intends to file an appeal out of time and seeks extension of time, the least (sic) he can do is to annex the draft intended petition of appeal for the Court's perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court's Record.

24. Consequently, the document termed as 'Notice of Appeal dated 16/12/2024' is a nullity and of no legal consequent. It cannot be deemed as duly filed. It is hereby struck- out.
25. Based on the preceding, I find that the Client/Applicant should have attached a Draft Notice of Appeal to its application for the court's consideration. Without such an annexure and having struck out the purported 'Notice of Appeal' filed herein, leave to appeal cannot be granted to the Client/Applicant as urged.

Whether the court can grant an order of stay of proceedings pending appeal or otherwise.

26. The Applicant has sought a stay of proceedings pending the appeal. In effect, the Applicant requests a stay of the taxation of Bill of Costs proceedings until the pending appeal is determined. The legal provisions governing a stay pending appeal are outlined in Order 42 Rule 6(2) of the Civil Procedure Rules, which states that:

“No order for stay of execution shall be made under subrule (1) unless—

- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.’
27. Having found that the 'Notice of Appeal' which was filed without leave of the court as required by rule 11 (3) of the Advocates Remuneration Order was defective, in the absence of a subsisting appeal, the prayer for a stay of proceeding is superfluous. It is otiose.
 28. Building on the findings above, the inevitable conclusion is that the orders of stay sought are premature and misconceived. They have been sought in isolation.

Which orders should the Court issue?

29. Having declined to grant the orders sought by the Client/Applicant; and, in particular, having struck out the 'Notice of Appeal' dated 16/12/2024, the Advocate's application is justified.
30. Final orders for disposal
Consequently, and in the circumstances, the final orders of the court are as hereunder;
 - a. The Client's application dated 23/1/2025 is devoid of merit and is hereby dismissed.
 - b. The Advocates' application dated 17/1/2025 is hereby allowed.
 - c. The Advocate shall have costs of both Applications.
31. It is so ordered



DELIVERED, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Mr Bruno for the Applicant/Advocate

Ms Mohammed for the Client/Respondent

CA- Ms Yvette Njoroge

