



Kiwasi (Suing in Her Capacity as the Personal Representative of Harry Kitao Stephens) v TPS Eastern Africa Limited (Cause 1964 of 2014) [2025] KEELRC 3085 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3085 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1964 OF 2014
CN BAARI, J
NOVEMBER 6, 2025

BETWEEN

ZAINAB BINTIFUNDI KIWASI (SUING IN HER CAPACITY AS THE PERSONAL REPRESENTATIVE OF HARRY KITAO STEPHENS) .. CLAIMANT

AND

TPS EASTERN AFRICA LIMITED RESPONDENT

RULING

1. Before Court is the Respondent/Applicant's Chamber Summons application dated 3rd May, 2024, brought pursuant to Sections 1A, 1B and 3A of the *Civil Procedure Act* and Paragraph 11(4) of the Advocates Remuneration Order. The Applicant seeks orders THAT: -
 - i. This Honourable court be pleased to enlarge time to allow the Applicant to file a reference against the taxing Master's decision delivered on 15th March, 2024 out of time
 - ii. The draft reference attached herewith be deemed as properly filed subject to payment of the requisite court fees.
 - iii. The costs of the application be in the cause.
2. The application is supported by grounds on the face thereof and the affidavit of Terry Gachinga sworn on 3rd May, 2024. The Applicant avers that it filed a reference against the Taxing Master's decision vide a miscellaneous application which was subsequently withdrawn.
3. It states that the earlier application was filed in error of form not fact and it is in the interest of justice that the application herein be allowed.
4. The Claimant/Respondent opposed the application vide a Replying Affidavit sworn by Zainab Bintifundi Kiwasi on 11th October 2024. The Claimant argues that whereas the Applicant seeks to



enlarge time to file a reference against the taxing master's Ruling delivered on 15th March 2024, the Respondent is yet to file an objection against the said Ruling in accordance with the mandatory provisions of Paragraph 11 (1) of the Advocates Remuneration Order.

5. The Claimant states that subject application is nothing but an attempt by the Respondent to protract the litigation of this matter and use the court process as a means of frustrating the Claimant from enjoying the fruits of his judgment.
6. Parties canvassed the application by way of written submissions which have been duly considered.

Determination

7. The singular issue for my determination is whether the Respondent/applicant merits the orders sought.
8. The Applicant's prayer is for the enlargement of time to allow it file a reference. Enlargement of time is an equitable remedy and not a right of a party, hence the party that seeks such enlargement, bears the burden of satisfying the court that the application is worthy of the exercise of the court's discretionary power. (See Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others, SC Application No. 16 of 2014(2014) eKLR).
9. The principles that guide the grant of such an application, are the length of the delay, the reason (s) for the delay, and the prejudice to the Respondent if the leave is granted.
10. The decision that the Applicant seeks to appeal against, was delivered on 15th March, 2024. The instant application was filed on 3rd May, 2024, the Applicant having filed a reference earlier, but due to error of form, it was forced to withdraw that reference and noticing that it had run out of time, it filed the instant application.
11. In *Kariuki v Wangeci & 7 others* (Civil Application E250 of 2023) [20241 KECA 1692 (KLR) (22 November 2024), the Court of Appeal held thus:-

“In this case the learned Single Judge did not address the issue of the advocate's mistake as a ground for extending time. There is no doubt that an advocate's mistake may, on some occasions, constitute a ground for extending time...”
12. In light of the foregoing, and further considering the circumstances under which the instant application and the attached draft reference were filed, I find and hold that the Applicant has sufficiently laid a basis for the extension of time to file a reference against the decision of the Taxing Master of 15th March, 2024.
13. In the premise, I proceed to grant the following orders:-
 - i. That an order be and is hereby issued to enlarge time to allow the Applicant file a reference against the Taxing Master's decision delivered on 15th March, 2024 out of time
 - ii. That the draft reference attached herewith be and is hereby deemed properly filed subject to payment of the requisite court fees.
 - iii. I make no orders on costs.
14. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6TH DAY OF NOVEMBER, 2025.



C. N. BAARI

JUDGE

Appearance:

Ms. Gachinga present for the Respondent/Applicant

Mr. Ochieng h/b for Mr. Agwara for the Claimant/Respondent

Ms. Esther S- C/A

