



Lubulellah & Associates Advocates v Vinayak Builders Limited (Miscellaneous Application E066 of 2023) [2025] KEHC 15528 (KLR) (Commercial and Tax) (3 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E066 OF 2023**

**F GIKONYO, J
NOVEMBER 3, 2025**

BETWEEN

LUBULELLAH & ASSOCIATES ADVOCATES ADVOCATE

AND

VINAYAK BUILDERS LIMITED CLIENT

RULING

1. The client filed the notice of motion dated 23.10.2024 seeking that: -
 - (2) The time for filing a reference against taxation ruling of 31.5.2023 extended on 23.8.2024 be extended by a further 14 days.
 - (3) The application dated 12.9.2024 be deemed to have been filed on time.
2. The application is made under section 3A of the *Civil Procedure Act* and order 5 of the Civil Procedure Rules. It is supported by the affidavit of Premji Vekaria and written submissions dated 21.1.2025.
3. The application is premised on the following grounds: -
 1. On 23.8.2024 the court granted leave to file a reference against the taxation ruling out of time.
 2. The client's previous advocates belatedly informed the client about the ruling and failed to advise it of the legal requirement to file the reference timeously.
4. The client submitted that the court did not specify a deadline for the applicant to file the reference. That it would be misleading to interpret Order 11(1) and 11(2) of the Advocates Remuneration Order (ARO) that the extension is limited to 14 days. That position would only apply in the first instance when a party is aggrieved by the decision of the taxing master.



5. The client submitted that its former advocates' mistake should not be visited upon them. That it has a right to be heard. That the respondent seeks to execute its bill of costs for the sum of Kshs. 10,000,000/-. That this amount is substantial, and if the applicant is not heard, it would be unfair not to proceed based solely on mere technicalities.
6. The client relied on the following cases: -
 1. Muthomi Karanja Advocates v Nairobi City County Assembly (Application 2 of 2021) [2024] KEHC 1666 (KLR) (Commercial and Tax) (23 February 2024) (Ruling)
 2. Ojienda v Nairobi City County (Miscellaneous Application 10 of 2019) [2024] KEHC 724 (KLR) (Constitutional and Human Rights) (1 February 2024) (Ruling)
 3. Blue Nile E.A Ltd v Lydia Gode Yusuf & Another (Miscellaneous Application 194 of 2018) [2018] eKLR
 4. Belinda Murai & Others v Amos Wainaina [1978] eKLR

Response

7. The advocate filed a replying affidavit sworn by Anthony Milimu Lubulellah on 17.1.2025 and written submissions dated 16.1.2025 and 20.03.2025.
8. The advocate blamed the client for being indolent suitor. They emphasized that the client only filed this application after they filed the preliminary objection of 18.10.2024 against the application of 12.9.2024.
9. The advocate asserted that the initial extension of time given by the court on 23.8.2024 was not indefinite and lapsed 14 days later. That time for filing a reference under Order 11 (1) and (2) of the ARO started running on 23.8.2024. That a party is not entitled to an indefinite period of time to comply after extension or enlargement of time is granted.
10. The advocate submitted that the client has not tendered a reasonable explanation for its failure to file a reference within the 14 days.
11. The advocate argued that the application dated 12.9.2024 is a nullity and of no legal consequence having been filed outside the statutory timeframe.
12. The advocate contended that the client's failure to comply within the extended timeframe is tantamount to an abuse of the court process. That it would be unjust and prejudicial to it to allow the client to benefit from its indolence. That the client will not suffer any prejudice as it was given numerous opportunities to be heard but squandered it.
13. The advocate relied on the following cases: -
 1. Gerald Kithu Muchanie v Catherine Muthomi Ngare & another [2020] eKLR
 2. George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others [2014] eKLR
 3. Stanley Kahoro Mwangi & 2 Others v Kanyamwi Trading Company Limited [2015] eKLR
 4. Dilpack Kenya Ltd v William Muthama Kitonyi [2018] eKLR
 5. First American Bank of Kenya Ltd v Gulab P. Shah & 2 Others [2002] 1 EA 65
 6. Evans Thiga Gaturu Advocate v Kenya Commercial Bank Limited [2012] eKLR



7. City Council of Nairobi v Judith A. Guserwa [2006] eKLR
8. W. Amolo t/a Amolo Kibaya & Co. Advocates Vs Samson Keenqu Nyamweya [2016] eKLR
9. Teachers Service Commission v Simon P. Kamau & 19 others [2015] eKLR
10. Habo Agencies Limited v Wilfred Odhiambo Musingo Civil Appeal (Application) No. 124 of 2004 (2015) eKLR
11. Rajesh Rughan v Fifty Investments Ltd & Another (2005) eKLR
12. County Executive of Kisumu v County Government of Kisumu & 8 others [2017] eKLR
13. Mugo and others v Wanjiru and another [1970] EA 484
14. Shehla Ghafoor v Attorney General & 2 others [2017] eKLR
15. Patrick Maina Mwangi v Waweru Peter [2015] eKLR
16. Machira & Co Advocates v Arthur K. Magugu & Margaret Wairimu Magugu CA 199/2002 [2012] eKLR
17. Matiri Mburu & Chepkemboi Advocates v Occidental Insurance Company Limited [2017] eKLR

Analysis and Determination

14. The issue before the court is whether time for filing a reference against taxation ruling of 31.5.2023 extended on 23.8.2024 be extended by a further 14 days.
15. The delay in filing the reference must be explained to the satisfaction of the court. The court will also seek to know, amongst other things, prejudice that may be occasioned in granting or refusing to grant the extension of time and whether the application has been made without unreasonable delay.
16. See the Supreme Court in Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others (Sup. Ct Application No. 16 of 2014) [2014] eKLR stated as follows: -

“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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
17. One preliminary issue. The parties took different stances on whether the extension of time for filing a reference should be 14 days.
18. The client relied on cases showing that, upon extension of time, the court may set a timeframe for filing of the reference.



19. The advocate took a different view; that the court can only extend the time for filing of a reference with only 14 days.
20. From a reading of the ruling of 23.8.2024, the court did not specify the timeframe given to the client to file its reference application.
21. Nonetheless, this does not entitle a party to claim that it had an open cheque to cash any time it feels like.
22. But, I will determine this application on other considerations within the right to be heard.
23. The client filed a reference application dated 12.9.2024 on 27.9.2024. This was about 36 days after the ruling date.
24. Is this delay inordinate and inexcusable?
25. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, the Court of Appeal noted that: -
 - “(12) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
26. The explanation given by the client is that its former advocates belatedly informed it about the ruling and failed to advise it of the legal requirement to file the reference timeously.
27. In the client’s previous application for an extension, the client also cited that its former advocates had occasioned the delay by not filing the notice of objection within 14 days, after having objected orally in court.
28. Courts have numerously held that mistakes of advocates should not be visited on clients when the situation can be remedied by costs.
29. In the circumstances of this case, I find that the delay is not inordinate and that the mistake can be remedied by costs.
30. On prejudice, I note that the taxed amount is huge. It is my considered view that if the time is not enlarged, the client stands to be prejudiced as its reference application will not be heard. Any prejudice on the advocate’s part will be ameliorated through costs to be paid by the client.
31. In the whole, therefore, I am persuaded that the client has satisfactorily explained the delay to unlock the exercise of the court’s discretion.
32. The application dated 23.10.2024 is allowed in terms of prayers 2 and 3. More specifically;
 - a) time for filing the reference is hereby extended with 14 days; and
 - b) the reference is deemed to be duly filed. The applicant shall bear the costs of the application.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 3RD DAY OF NOVEMBER, 2025.

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F. GIKONYO M

JUDGE

In the presence of:

Ms. Kabaila for Mutiso for Clients

Wendoh for Advocate

CA- Kinyua

