



**Ochieng v Awanad Enterprises Limited & 2 others (Cause 22 of 2019)
[2025] KEHC 17909 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17909 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CAUSE 22 OF 2019
K OCHARO, J
NOVEMBER 27, 2025**

BETWEEN

LABAN OWINO OCHIENG APPLICANT

AND

AWANAD ENTERPRISES LIMITED 1ST RESPONDENT

PILI MANAGEMENT CONSULTANTS LIMITED 2ND RESPONDENT

HABO GROUP OF COMPANIES 3RD RESPONDENT

RULING

1. By a Notice of Motion Application dated 4th December 2024, the Claimant/Applicant seeks the following orders;
 - I. That the Honourable Court be pleased to grant leave to the Applicant and enlarge time to file a reference out of time against the decision of the taxing master on taxation of costs that gave rise to the Notice to show cause dated 3rd April 2024;
 - II. The Honourable court declares the decision on taxation of costs issued in ELRC Cause No. 22 of 2019 null and void ab initio;
 - III. The Honourable Court be pleased to vacate and set aside in its entirety the Tax Master’s decision on Taxation of Costs that gave rise to Notice to show cause dated 3rd April 2024 in Mombasa ELRC NO. 22 of 2019; Laban Owino Ochieng V Awanad Enterprises Limited & 2 Others, and the same be referred to fresh;
 - IV. Pending the Hearing and Determination of this Application, this Honourable Court be pleased to stay the execution of the Decree herein by the Respondents, whether by themselves, their agents, servants or otherwise;



- V. Pending the hearing and Determination of this Application, this Honourable Court be pleased to issue a stay of proceedings in this matter;
- VI. Costs of the Application be awarded in favour of the Applicant.
2. The Application is grounded on the grounds set out on the face of the application, and the affidavit in support of the application, sworn by the Applicant.
 3. The Respondents oppose the Application on the grounds set out in the replying affidavit sworn by their Counsel, Paul Amuga, on 28th February, 2025.
 4. Following the directions of this Court, the parties have filed their respective submissions.

The Application

5. The Applicant asserts that on 30th April 2024, he received a Notice to Show cause dated 3rd April 2024, through his WhatsApp mobile phone App, from the Respondents' Counsel.
6. He asserts that he is unaware of the Taxation of Cost proceedings that led to the Show Cause, as he was not notified. During the proceedings, he was unrepresented. Further, he has never been served with the ruling flowing from the Taxation Proceedings.
7. He asserts that if indeed there exist any such proceedings against him, carried out on 30th April 2024, he needs to be given a chance to defend himself and participate in the proceedings.
8. He states that he only became aware of the proceedings against him on 30th April 2024, when he was served with the Notice to Show Cause. He had never been given an opportunity to defend himself in any proceedings.
9. The decision that gave rise to the taxation was disposed of through a preliminary objection. As such, the costs assessed as reflected on the Notice to Show Cause are highly exaggerated.

The Response

10. The cause was dismissed on 27th September 2019, with costs. After the dismissal, the Respondents filed their separate bills of costs. The bills, together with the notice of taxation, were served upon the Claimant/Applicant through his Advocates then or record.
11. Their Counsel was not required to serve the bills and taxation notice[s] upon the Claimant personally because he was represented by a firm of Advocates, M/S F.K Omenya Advocate, who were duly served on 20th November, 2019, 17th March, 2020 and 17th July, 2020. A copy of the taxing officer's ruling was served on him.
12. The Claimant was notified of the taxation of the bills of costs way back in October 2020 when the certificates of costs issued by the Court were served on his Advocates.
13. They further state that they proceeded to execute for the costs after the Claimant did not settle them. The Claimant admits receiving the Notice to Show Cause on 30th April 2024, but does not explain why he waited until 4th December 2024 to file this application. The inordinate delay in filing the Application for extension of time has not been explained.
14. The Court of Appeal, Appeal No. e 054 of 2021, which the Claimant alleges to be pending, was struck out on 26th April 2024.



Determination

15. I have carefully examined the Claimant's Application, including the grounds on which it is based, the supporting affidavit, the replying affidavit, and the submissions by Counsel for the parties. A single issue arises for determination: whether the Claimant/Applicant's application is merited.
16. Granting an extension of time for filing a reference outside the prescribed period is a discretionary exercise. Such discretion must be exercised judiciously, not whimsically or capriciously, and not based on sympathy. The Applicant is required to provide a sufficient explanation for the delay. The conduct of the Applicant is a relevant factor, and therefore, an Applicant who appears before the Court with unclean hands is unlikely to have the discretion exercised in their favour.
17. The Claimant firmly asserts that he only became aware of the taxation of the party and party bills of costs against him when he was served with the Notice to show cause dated 30th April 2024. Conversely, the Respondents argue that the Claimant was at all material times notified of all the post-judgment events through his Counsel on record at those times.
18. In my view, the Claimant's application is anchored on half-truths, and this is the reason why it must fail. This Court notes that by a Notice of Motion dated 1st March 2021, filed herein on 16th March 2021, the applicant sought;
 - a. That this application be certified as urgent, service be dispensed with, and heard *ex parte* in the first instance.
 - b. That pending the inter partes hearing and determination of this Application, this Honourable Court be pleased to issue an order of Stay of the ruling delivered on 9th February 2021 by Honourable Saitabau, Deputy Registrar, taxing the 2nd and 3rd Respondents' party and party bill of costs at each Kshs. 659,415,605.
 - c. That pending the hearing and determination of Mombasa ELRC Cause No. 66 of 2019-Laban Owino Ochieng v Awanad Enterprises Limited and 3 others, this Honourable Court be pleased to issue an order of stay of execution of the ruling delivered on 9th February 2021 by Hon Lesooth Saitabau, Deputy Registrar, taxing the 2nd and 3rd Respondents' party and party bills of costs at KShs. 659,415,605 each.
19. It is important to note that the claimant swore an affidavit on 1st March 2021 supporting this application. This affidavit confirms his awareness of the taxation of the bills of costs, the proceedings leading to the taxation ruling, and the subsequent execution processes. I find it difficult to understand how a party that, as early as 1st March 2021, was aware of the taxation ruling, could, nearly three years and eight months later, claim ignorance of the proceedings and taxation in an attempt to mislead the Court and obtain an extension of time. The Claimant has approached this Court with half-truths and, therefore, with dirty hands. He is undeserving of a favourable exercise of discretion by this Court on his instant application.
20. In conclusion, I find the Claimant /Applicant's application dated 4th December 2024 to be an abuse of the Court process and without merit. It is therefore dismissed with costs.

READ, SIGNED, AND DELIVERED THIS 27TH DAY OF NOVEMBER 2025.

OCHARO KEBIRA

JUDGE

