

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC E006 OF 2023

HON. ZAKAYO CHERUIYOT.....
APPLICANT

VERSUS

DAVID KIPKIRUI NGENO1ST
RESPONDENT

JONATHAN KIPNGENO MARITIM.....2ND
RESPONDENT

JOHN KIPKURUI KOSKEI.....3RD
RESPONDENT

JOHN KIPKEMOI SIGEI.....4TH
RESPONDENT

DAVID KIPROTICH KIRUI.....5TH
RESPONDENT

PAUL KIPKIRUI SIGEI.....6TH
RESPONDENT

RULING

1. This Ruling is in respect of an application seeking extension of time for a second reference to be filed by Hon. Zakayo Cheruiyot against the Ruling dated and delivered on 6th February 2025 in respect of the certificate of taxation over the Party and Party Bill of costs dated 28.11.2024. the first reference having been filed vide ELC MISC E001 OF 2025 Kilgoris between the same parties herein and vide the ruling dated 26th day of July, 2025 the said reference was struck out having been filed out of time.
2. The application thus seeks the following substantive orders; -

- (i) Spent.
 - (ii) That this honourable court be pleased to grant leave to the Applicant to lodge a reference out of time.
 - (iii) That pending the hearing and determination of this application, the court be pleased to issue an order staying execution of the ruling delivered by Hon Cyprian W. Waswa Deputy Registrar on 6th February and the certificate of costs dated 20th February 2025 and all consequential orders arising therefrom.
 - (iv) That, the court be pleased to issue an order staying execution of the ruling delivered by Hon Cyprian W. Waswa Deputy Registrar on 6th February and the certificate of costs dated 20th February 2025 and all consequential orders arising therefrom pending hearing and determination of the intended reference.
3. The grounds in support of the reference are *inter alia* that; -
- (i) The Applicant is aggrieved by the ruling delivered by the Deputy Registrar on 6th February 2025 and instructed his advocates to file a reference against the taxation but the said advocates did not file the said reference in time leading to the striking out of the reference filed vide ELC MISC E001 OF 2025 Kilgoris.
 - (ii) That the taxed amounts in this case were excessively high and ought to be reviewed.
 - (iii) That time ought to be enlarged so as to enable the reference to be filed.
4. The Application is supported by the affidavit of the Applicant who reiterates the grounds in support of the Application in his depositions and has annexed copies of the warrants of arrest against the Applicant, draft reference, letter to the DR seeking reasons for the taxation.
5. The Application was opposed by the Replying Affidavit of David Kipkurui Ngeno who deposes *inter alia* that:

- (i) Execution is a lawfully process and that the warrants were issued lawfully pursuant to the process.
 - (ii) the delay of 7 months in seeking an extension of time is inordinate and cannot be excused
 - (iii) the Ruling dated 6th February contained the reasons hence the issue of no reasons having not been issued is neither here nor there.
6. The court heard the Application by way of oral submissions with Ms. Njogu and Mr. Kipngetich Learned counsels arguing the same on behalf of the Applicant while Ms. Mireri Learned counsel appeared for the Respondents.

Applicants Submissions

7. Ms Njogu learned counsel for the Applicant submitted that the Applicant was not indolent as he had taken steps to challenge the Bill of costs but his reference was file out of time and thus struct out. Placing reliance on the decision in the case of Paul Gacheru T/A Paul Gacheru and Co. Advocates vs Kargua Construction Limited which held that a taxing master must give reasons for the taxation, the Applicant submits that no reasons were given for the taxation. She urged the court to allow the application. In his submission Mr. Kipngetich Learned Counsel submitted that the exercise of the discretion is unfettered but the same should be exercised judiciously, that the delay has to be considered alongside the substantial justice and the Applicant be given a chance to argue the reference on its merits.

Respondents Submissions

8. Miss Mireri Learned counsel for the Respondents submitted that extension of time was discretionary to the court and in exercise of the discretion the court should look at the length of the delay the reasons for the delay and the chances of success.
9. On the chances of success, it is submitted that the bill of costs was not attached to the application so as to let the court compare the

impugned ruling vis a vis the Bill of costs. That no reasons or the delay has been stated and that the impugned ruling has given the reasons at paragraphs 6 to 14 thereof and that the issue of there being no reasons was settled the first reference. She placed reliance in the decisions in the case of Mumias sugar V Tom Ojienda as well as Kiptoo Tito and Kiara vs Deposit Protection Fund Board. On the draft reference it was submitted that the same is drafted and is to proceed s though reasons were issued. She urged the court to be guided by the decision in the case of Ahmed Nassir vs NBK Limited as well as Mungu n 2 others vs Nyinge

10. In a brief rejoinder it was submitted that there were no reasons given in the taxation contrary to the ARO and that the only prejudice on the respondent would be delay.

11. **Issues for Determination**

12. Having analysed the Reference the certificate of costs, the Bill of Costs as well as the impugned Ruling thereof, the submissions of the parties, the court frames the following as issues for determination.

(i) Whether the application is merited.

(ii) Who bears the costs of the Application?

Analysis and Determination

13. On issue number 1, in order to determine whether the application is merited, the court shall look at the whether the same meet the principles for extension of time.

14. The Applicant did not address the court on the principles applicable in the enlargement of time. They argued rightly though that the enlargement of time is discretionary which discretion must be applied judiciously. The principles for enlargement of time were stated in the decision in the case of Leo Silla Mutiso vs. Rose Hellen Wangari Nairobi Civil Application 255/1997 where the court held *inter alia*; **"it is now well settled that the decision whether or not to extend the time for appealing is essentially**

discretionary, it is also settled that in general the matters which the court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly the reason for the delay, the chances (possibly) of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the Respondent if the application is granted”

15. Applying the said principles to this application, the impugned ruling was delivered on 6th February 2025, the application seeking an extension was filed on 22nd September 2025. The applicant had 14 days from the 6th February 2025 to file the reference. They filed the first reference out of time, and this application was filed 7 months late.
16. Whereas in ordinary circumstances 7 months delay is not very inordinate the circumstances herein suggest that the Applicant was well aware of the need to file this application timeously his first reference having been struck out but was just indolent and the reasons that he was not informed is outrightly implausible as there were so many other procedures that took place in the file resulting to the issuance of the warrants
17. The 2nd Principle require that reasons for the delay be explained. the Applicant submits that the reasons for the delay is that the impugned ruling gave no reasons for the taxation. The respondents submit that the issue of whether there were reasons given in the taxation was dealt within in the ruling in the first reference.
18. The ruling in the first reference was annexed as annexure ZC 2 and at paragraph 15 to 18 thereof the court found that the impugned ruling in relation to the taxation contained reasons. Having settled this issue in the first reference it was not available to the Applicant to place reliance on the same.
19. The court has found that the Applicant was indolent in filing the application and gave no reasons for the late filing of this

application, the applicant has not the threshold for grant of the relief of enlargement of time on account of not satisfying the said two conditions.

20. The court finds that Application herein having not met the first two conditions for enlargement of time and turning on whether the intended reference has chances of success, the Applicant submits that the same is manifestly excessive for a matter that did not proceed for trial - is an arguable point and that the respondent will suffer delay as the only prejudice. considering this last two conditions that the Applicant has met, the court exercises discretion in favour of the Applicant who has met the last two conditions in the Principle in Leo Silla Mutiso and allows the application in terms that:

- a) the Applicant shall Pay Kshs 350,000/= of the taxed costs to the Respondents within 7 days from today
- b) the Applicant is granted leave to file the reference within 7 days from today, failure to which the leave lapses
- c) in default of any of the above conditions, the interim stay of execution orders shall lapse.
- d) costs of this application are awarded to the Respondents in any event.

Dated at Kilgoris this 9th day of December, 2025.

Hon. M.N Mwanyale
Judge

In the presence of

CA - Emmanuel/Sylvia/Sandra

Ms. Njogu for the Applicant

Ms. Mireri for the Respondent

Mr. Shira for the 1st Defendant

