

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT KILGORIS**  
**MISC(L)\_ E015 OF 2025**

**LEONARD LENANA KETERE.....**  
**APPLICANT**

**VERSUS**

**SIMON LEBOO MORINTANTAT.....1<sup>ST</sup>**  
**RESPONDENT**

**BERNARD KETERE.....2<sup>ND</sup>**  
**RESPONDENT**

**JONATHAN KOIKAI KETERE..... 3<sup>RD</sup>**  
**RESPONDENT**

**KORINGO OLE NGOLIAI..... 4<sup>TH</sup>**  
**RESPONDENT**

**DISTRICT LAND REGISTRAR KILGORIS.....5<sup>TH</sup>**  
**RESPONDENT**

**RULING**

1. This Ruling is in respect of an application seeking extension of time to file a reference to be filed by Leonard Leonard Keterere against the Ruling dated and delivered on 23<sup>rd</sup> June 2025 in respect of the certificate of taxation over the Party and Party Bill of costs dated 29.05.2025 in KILGORIS ELC LC E017 OF 2024 which suit had been struck out for being *resjudicata*.
2. . The application thus seeks the following substantive orders; -
  - (i) Spent.
  - (ii) That this Honourable court be pleased to grant leave to file an objection and a taxation reference to this honourable court against the ruling of the Honourable court's taxing master

delivered on 23<sup>rd</sup> June 2023 the Applicant to lodge a reference out of time.

- (iii) That the leave granted in prayer 2 above operate as a stay of execution of the ruling of the taxing officer aforesaid and any other consequential proceedings.
  - (iv) That, upon grant of prayer 2 and 3 above the draft notice of objection and draft reference hereto be deemed as duly filed and served upon payment of requisite fees, The grounds in support of the reference are *interalia* that; -
    - (i) The Applicant is aggrieved by the ruling delivered by the Deputy Registrar on 6<sup>th</sup> 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 there be a stay of execution of the certificate of taxation the decree and all consequential proceedings including the Notice to show cause scheduled for 13<sup>th</sup> August 2025 pending hearing and determination of the intended reference.
3. 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 Bill of costs, copy of the Ruling striking out the suit, draft memorandum of appeal to the Court of Appeal, warrants of arrest against the Applicant, draft reference,
4. The Application was opposed by the Grounds of opposition on the grounds *interalia* that:
- (i) The Application has been filed with inordinate delay and no reasons for the delay have been given,
  - (ii) the issue of the Applicant not been given a chance to be heard on their taxation is an issue to be raised before the taxing master and not this court

(iii) the applicant filed a previous application which was dismissed for nonattendance hence making this present application *resjudicata*.

5. The court heard the Application by way of oral submissions with Mr. Mongeri Learned counsels arguing the same on behalf of the Applicant while Ms. Ochwal Learned counsel appeared for the Respondents.

#### **Applicants Submissions**

5. Ms Mongeri learned counsel for the Applicant submitted that the Applicant that the Applicants were not granted audience by the taxing master and their application to set aside was dismissed that the bill of costs was taxed excessively and the matter was not did not proceed for full hearing but was dismissed pursuant to an application.

#### **Respondents Submissions**

6. Miss Ochwal Learned counsel for the Respondents submitted that there was a taxation notice served on the Applicant but the Applicant did not fan objection thereto nor attend for hearing of the same. That no reference can be filed without an objection yet no reasons or failure to file an objection was given that the Applicant is essentially seeking for stay orders in a dismissal hence order 42 rule 6 does not apply

7. In a brief rejoinder it was submitted that there were objection to the Bill of costs were filed and that there is a pending appeal before the Court of appeal in Kisumu.

#### **Issues for Determination**

8. Having analysed the intended 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**

9. On issue number 1, in order to determine whether the application is merited, the court shall look at whether the same meet the threshold for extension of time.
10. None of the parties addressed the court on the principles for enlargement of time to file an appeal or a reference as is in this case. 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"**
11. Applying the said principles to this application, the impugned ruling in respect of the taxation was delivered on 23<sup>rd</sup> June 2025, the application seeking an extension was filed on 13<sup>th</sup> August 2025. The applicant had 14 days from the 23<sup>rd</sup> June 2025 to file the reference. Hence this application was filed 2 months late. Two months delay is not very inordinate but no reasons for the delay were advanced by the Applicant as required under the 2<sup>nd</sup> Condition.
12. The Applicant alludes that he filed objections to the Bill of costs, which the court did not consider, however the objection filed as annexed to the Application is dated 11<sup>th</sup> August 2025, while the Ruling was delivered on 23<sup>rd</sup> June 2025, hence the Respondent is right that there was no objection for the taxing master to consider before he delivered the ruling. The application further seeks a stay of execution as there is a pending appeal, the Applicant's suit was dismissed as having been found to be Res judicata vide the ruling

delivered on 6<sup>th</sup> of March 2025 hence the dismissal being a negative order no stay of execution can issue.

13. On the chances of intended reference succeeding, the draft reference annexed to the Supporting affidavit is based on grounds *inter alia* that the getting up fees for trial were not applicable in the circumstances of the case as the matter did not proceed to full hearing. This is the same reason advanced in the notice of objection dated 11<sup>th</sup> August 2025. I have looked at the bill of costs that was taxed and annexed in the supporting affidavit contrary to the allegation raised that getting up fees were billed, taxed and awarded, the bill of costs did not have getting up fees, the court doubts whether the intended reference would succeed in the premises. On prejudice the Applicant has not indicated the prejudice that would be occasioned to the Respondent.
14. The court finds that Application herein having not met even one of the conditions for enlargement of time and turning on as set out in Leo Silla Mutiso and declines to exercise its discretion in favour of the Applicant.
15. The upshot is that the Application having not met the threshold for enlargement of time lacks merit and it is dismissed with costs to the respondents. The Interim orders earlier issued on 13<sup>th</sup> October 2025 are hereby vacated.

Dated at Kilgoris this 16<sup>th</sup> day of December, 2025.

Hon. M.N Mwanyale  
Judge

**In the presence of**

CA – Emmanuel/Sylvia/Sandra

Ms. Esang h/b for Mr. Mongare for the Applicant

Mr. Mulisa for the Respondent

