

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISCELLANEOUS APPL. NO. E868 OF 2025

OLD MUTUAL GENERAL INSURANCE KENYA LTD.....
APPLICANT

VERSUS

JOVAH KARIUKI T/A MORAN AUCTIONEERS.....
RESPONDENT

RULING

1. The Applicant's Notice of Motion dated 27th August 2025 is brought under Order 51 Rule 1, Order 42 Rule 6, Order 50 Rule 6 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, and Rule 55(5) of the Auctioneers Rules. The substantive prayers are for:
 - i. A stay of execution of the Certificate of Taxation in HCCOMM MISC E550 of 2025 pending the intended reference; and*
 - ii. Leave to file a reference out of time against the taxation delivered by Hon. Noelle Kyanya, Deputy Registrar, on 12th August 2025.*
2. The application is supported by the affidavit of Sheila Maina, legal counsel for the Applicant, who depones that the Applicant is dissatisfied with the decision of the Taxing Officer and wishes to challenge it out of time. She states that

the delay of seven (7) days is excusable and contends that the Taxing Officer erred by failing to consider a stay of execution order allegedly issued in HCCA E1329 of 2024. She also asserts that the Auctioneer failed to comply with Rule 12(b) of the Auctioneers Rules by not preparing a proper inventory, thereby rendering the attachment fatally defective.

3. The Respondent, in opposition, filed a replying affidavit sworn on 25th September 2025. He avers that he is the successful party in whose favour the Auctioneer's Bill of Costs dated 26th May 2025 was duly taxed. He filed the Bill on 29th May 2025, and the Applicant was served on 24th June 2025 as evidenced by an Affidavit of Service marked "JK-1". When the matter came before the Deputy Registrar on 8th July 2025, the Applicant neither appeared nor filed any pleadings, leading the Court to proceed to ruling.
4. The Respondent further states that although the Applicant filed a Notice of Appointment and a Preliminary Objection on 9th July 2025, the documents were backdated to 7th July 2025 in an attempt to mislead the Court. On 12th August 2025, the Deputy Registrar taxed the Bill at Kshs. 164,272/= pursuant to the Auctioneers Rules.
5. The Respondent argues that the Applicant became aware of the ruling on 13th August 2025 yet filed the instant application on 28th August 2025, sixteen days after taxation, contrary to Rule 55(4) of the Auctioneers Rules, which mandates filing a reference within seven days. He urges the

Court to dismiss the application as incompetent and an abuse of process.

Issues for determination

6. After considering the pleadings and submissions, the issues that arise for determination are:

- i. Whether the Applicant has demonstrated sufficient cause to warrant extension of time under Rule 55(4) of the Auctioneers Rules; and*
- ii. Whether the Applicant has met the threshold for stay of execution under Order 42 Rule 6 of the Civil Procedure Rules.*

Analysis and determination

7. **Rule 55(4)** of the **Auctioneers Rules** provides:

“Any person who is aggrieved by the decision of a registrar or magistrate in respect of fees may, within seven days, apply to a judge in chambers.”

8. The Rule is couched in mandatory terms. It creates a strict, short limitation period within which an aggrieved party must move the Court. The purpose of the provision, consistent with the nature of taxation proceedings, is to ensure finality, expedition, and avoidance of delays in the enforcement of costs.

9. The Applicant concedes that it became aware of the ruling on 13th August 2025. On its own admission, the reference ought to have been filed on or before 20th August 2025. However, the present application was filed on 28th August 2025, nine days outside the statutory period.

10. Whether the Court should enlarge time is a matter of discretion. The principles governing such discretion were crystallized by the Supreme Court in **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR**, where the Court stated:

“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.”

11. The Applicant argues that the delay was “a mere seven days” and therefore excusable. It also contends that the Taxing Officer failed to consider a stay order in HCCA No. E1329 of 2024 and the alleged non-compliance with Rule 12(b) of the Auctioneers Rules by the Respondent.

12. However, the explanation tendered relates to the merits of the intended reference, not to the delay. The law is settled that the Court must first be satisfied that delay is properly explained before examining the merits. In **Mae Properties Ltd v Joseph Kibe & Another [2017] eKLR**, the Court of Appeal held:

“An applicant must place before the court material to explain the reason for delay. Without

such explanation, the court has no basis to exercise its discretion.”

13. Here, the Applicant has not demonstrated any obstacle or difficulty that prevented timely filing. No evidence was supplied of administrative lapses, inadvertence by counsel, diary error, or any impediment outside the Applicant’s control.

14. On the contrary, the Respondent demonstrates that, the Applicant was duly served with the Bill of Costs on 24th June 2025, the Applicant failed to attend the taxation on 8th July 2025 despite service, the Applicant filed documents dated 7th July 2025 but uploaded them on 9th July 2025, conduct the Respondent asserts was intended to mislead the Court, and the Applicant waited 16 days after the ruling to file the present application.

15. Courts have consistently held that indolence, laxity, and procedural impropriety cannot be condoned. In **Bi-Mach Engineers Ltd v James Kahoro Mwangi [2011] eKLR**, the Court of Appeal emphasized:

“The Rules of Court must be followed. The Court cannot aid a party who, through negligence or indolence, fails to comply.”

16. The Applicant has not met the threshold for extension of time. The delay is not only unexplained; it is unreasonable

and prejudicial, given that the Respondent is entitled to the fruits of a valid Certificate of Taxation.

17. On whether the Court can stay execution, the Applicant must satisfy the conditions in **Order 42 Rule 6(2)** of the **Civil Procedure Rules**, that is:

- i. Demonstrate substantial loss;*
- ii. File the application without unreasonable delay;*
- iii. Provide security for the due performance of the decree.*

13. The Applicant has failed to demonstrate substantial loss. Its argument that the taxation was erroneous does not meet the legal threshold. The Court of Appeal in **Kenya Shell Ltd v Benjamin Karuga Kibiru [1986] eKLR** famously held:

“Substantial loss is what has to be prevented by preserving the status quo...Mere dissatisfaction with the decision does not amount to substantial loss.”

14. No affidavit evidence has been tendered showing that payment of Kshs. 164,272/= would cripple the Applicant, jeopardize its operations, or cause irreparable harm. On the contrary, as a major insurance company, the Applicant is presumed capable of satisfying such a modest amount.

15. On delay, the application was filed 16 days after the ruling, well outside the statutory 7-day window, and thus

fails both the requirement of promptness and the mandatory rule under the Auctioneers Rules.

16. Finally, the Applicant has not offered any security, nor has it expressed willingness to deposit the taxed amount or any portion thereof. Failure to propose security is fatal.
17. The Applicant further argued that the attachment process was defective under Rule 12(b) of the Auctioneers Rules and that a stay order existed in another matter. These issues relate to the substantive merits of the intended reference and cannot cure non-compliance with mandatory procedural requirements. As stated in ***Salat*** (supra), “equity does not aid the indolent.”
18. Accordingly, the Notice of Motion dated 27th August 2025 is dismissed with costs to the Respondent.

RULING delivered virtually, dated and signed at **NAIROBI**

This **11th** day of **December** 2025.

P.M. MULWA
JUDGE

In the presence of:

Ms. Wangui for Applicant

Court Assistant: *Carlos*

