



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**MILIMANI LAW COURTS**

**ELC MISC APPLICATION NO. E112 OF 2025**

**JIMMY SAUSI OCHOKI**

**T/A OCHOKI AND OCHOKI ASSOCIATES**

**ADVOCATES.....APPLICANT**

**VERSUS**

**KIHUMO PROPERTY DEVELOPERS (K) LIMITD.....RESPONDENT**

**RULING**

1. In the Chamber Summons application dated 30<sup>th</sup> April 2025 the Advocate/  
Applicant prays for the following orders;
  - a. That the execution of the certificate of costs and ruling thereto delivered on 25<sup>th</sup> February, 2025 and served electronically on the Applicant on the 7<sup>th</sup> March, 2024 be suspended and/or stayed pending the hearing and determination of this application.
  - b. That this Honourable court be pleased to enlarge time for the Advocate/Applicant to file a reference to this court against the certificate of costs and ruling of the taxing master given on the 25<sup>th</sup> February, 2025 and served on the Applicant electronically on the 7<sup>th</sup> March, 2025 herein.
  - c. That this chamber summons herein be admitted as a reference against the taxation proceedings and the Honourable court be pleased to vary,

review and/or set aside the certificate of costs and the ruling of the taxing master given on the 25<sup>th</sup> February, 2025 and in its place strike out and/or dismiss the party and party bill of costs dated 24<sup>th</sup> April, 2024.

- d. That the Honourable court be pleased to stay the execution of the ruling delivered on the 25<sup>th</sup> February, 2025 the pending hearing and determination of Appeal No. E 786 of 2023 which is pending hearing in the Court of Appeal.
  - e. Costs of the application be awarded to the Applicant.
2. The Advocate/ Applicants application is premised on the grounds that the Taxing Master taxed the Party and Party Bill of Costs herein at an amount of Kshs Nine Hundred and Fifty Six Thousand Six Hundred and Twenty Nine and Fifty Six Cents on the 25<sup>th</sup> February 2025.
  3. That the advocate filed an objection dated 11<sup>th</sup> March 2025 and sought reasons for the taxation pursuant to Section 11 (2) of the Advocates Remuneration Order.
  4. The Advocate / Applicant deposes that two days later he received a call that his mother was critically ill. He travelled home to attend to her. She tragically did not recover. He states that the family responsibility of organizing the send off of his mother fell upon him as the first born. Due to the pressure of coordinating his mothers burial he did not file a reference within time. He requests the court to grant extension of time within which to file a reference.

5. While this application was still pending, the Advocate/ Applicant filed yet another application dated 12<sup>th</sup> August 2025 in which he seeks leave of the court to submit the Replying Affidavit sworn by Francis Mwangi dated 22<sup>nd</sup> May 2025 and transfer dated 8<sup>th</sup> April 2015 to the Directorate of Criminal Investigation. His application is brought on the grounds that the Directors of the Respondent Company are fond of forging signatures and the said Francis Mwangi's signature on the Replying Affidavit and the signature on the transfer are different hence should be investigated by the court. He urges the court to stay the Ruling of the earlier application to allow the DCI to submit a report on the signatures.
6. The two applications are opposed by the Respondent on the grounds that the Advocate/ Applicant has failed to prosecute the appeal in the Court of Appeal. That the court cannot wait for investigations which can take many years to complete while delaying this matter. He also avers that the reasons by the Advocate/ Applicant for the delay in filing the reference are not valid and should be disregarded by the court.
7. I have considered the applications, the affidavits and submissions filed herein. The twin issues for determination are whether the court should grant extension of time within which to file a reference and whether the court should stay the Ruling so as to await the DCI report.
8. On the question of extension of time, the court has wide discretion to enlarge time under Section 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules, 2010. Section 95. Enlargement of time

*Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.*

9. Power to enlarge time (Order 50, rule 6)

*Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.*

10. The Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Korir Salat v IEBC & Others [2014] eKLR outlined the following guidelines for consideration in an application for enlargement of time:

“(1) 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;

(2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

(3) Whether the court should exercise discretion to extend, is a consideration to be made on a case to case basis;

(4) Whether there is a reasonable reason for the delay, the delay should be explained to the satisfaction of the court;

(5) Whether there will be any prejudice suffered by the Respondent if the extension is granted;

(6) Whether the application has been brought without undue delay;

11. In the instant case, the Advocate/ Applicant immediately filed a Notice of Objection but did not file the reference due to a bereavement which came with many family responsibilities. Death comes with disruption and emotional upheaval which is undeniable. I also note that once he finished the funeral arrangements he immediately filed the present application. I have considered the circumstances of the Advocate/ Applicant as described in detail and I find that this is a fit case to exercise discretion in his favour.

12. On the second application this is an miscellaneous application file regarding the specific issue of extension of time. The issue of delay in courts was taken seriously by Kenyans who in enacting the Constitution placed on courts the responsibility to ensure that justice is not delayed. It would be an affront to this constitutional imperative for this court to hold its Ruling in abeyance while awaiting reports by other government agencies who have laws and procedures to handle any criminal activity. I therefore find that the second application has no merit.

13. On the question of costs given the circumstances that led to the filing of the first application, each party will bear their own costs for the application. However the Respondent will have the costs for the 2<sup>nd</sup> application which is dismissed.

14. Consequently, the court makes the following orders;

- a. Leave to file reference out of time is granted. Reference should be filed within 14 days
- b. Application to arrest ruling dismissed with costs.

**Ruling Signed dated and delivered via Microsoft teams this 4<sup>th</sup> day of December 2025**

**JUDY OMANGE**

**JUDGE**

***In the presence of***

*Court Assistant Catherine*

*Mr. Saisi for Applicant*

*Mr. Nyaga holding brief for Mr Mongeri for Respondent*