



REPUBLIC OF KENYA



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**Njenga & another v Kipkoech t/a Brave Auctioneers (Civil Miscellaneous
E297 of 2025) [2026] KEHC 613 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL MISCELLANEOUS E297 OF 2025
SM MOHOCHI, J
JANUARY 29, 2026**

BETWEEN

JIMMY NJENGA 1ST APPLICANT

PETER MAINA NJEHIA 2ND APPLICANT

AND

HILARY KIPKOECH T/A BRAVE AUCTIONEERS RESPONDENT

RULING

1. By way of Chamber Summons Application dated 6th October, 2025, the Applicants moved this Court seeking the following orders:-
 - i. Spent
 - ii. That this Honourable Court be pleased to grant leave to the Applicant to file a reference out of time against the ex-parte taxed costs delivered on 4th September, 2025 in the lower Court in Molo Misc Application No. E015 of 2025.
 - iii. That the intended reference be deemed as duly filed and served upon payment of fees
 - iv. That this Honourable Court be pleased to Order a stay of execution of the taxed costs of Kshs 468,860 in the lower Court to wit Molo Misc Application No. E015 of 2025 and the decree dated 4th September, 2025 pending the hearing and determination of this Application inter partes
 - v. That this Honourable Court be pleased to Order a stay of execution of the taxed costs of Kshs 468,860 in the lower Court to wit Molo Misc Application No. E015 of 2025 and the decree dated 4th October, 2025 pending the hearing and determination of this Application and the intended reference



vi. That costs of this Application

Applicant's Case

2. The Applicants case is premised on the grounds set out on the face of the Application and on the Supporting Affidavit of Audrey Mwira, Advocate evenly dated. She deposes that the Applicant was served with a decree, warrants of attachment and proclamation by the Respondent emanating from Molo CMCC No 265 of 2019 in respect of Motor Vehicle Registration number KCF 902M.
3. That the parties did not reach an agreement of auctioneers' fees and the Respondent proceeded to secretly file Molo Misc App No. E015 of 2025 to tax his Bill of Costs and never served the Respondent with his Bill of Costs. The Bill was taxed at Kshs 468,860 whereupon the Respondent was issued with a certificate of costs and has proceeded to extract a decree and may proceed with execution.
4. She deposes that the award was excessive, lacking legal justification, punitive in nature and not compensatory.
5. She further deposes that the reason for the delay in filing the Reference was that the Applicant received the Certificate of Costs after the lapse of 14 days and was not aware that the Respondent had served an auctioneers Bill of Costs.
6. It was further stated that the Application has been made without delay, that the Respondent stands to suffer no prejudice if the Application is allowed whereas the Applicants stand to suffer prejudice if the Certificate of Costs is enforced without being afforded an opportunity to challenge it.
7. Counsel deposes that unless the Application is allowed the Applicant will be condemned unheard. She further avers that if the Application is not heard on priority basis the whole Application and intended Reference will be rendered nugatory as the Respondent shall proceed with execution against the Applicants in the absence of stay of execution orders.

Applicants' Submissions

8. In the submission dated 10th November, 2025, the Applicants through their counsel submitted that Motor vehicles registration Numbers KDA 704X, KCD 317Z, KCV 742SAND KCF 875Z (Toyota Matatus) constitute the Applicants main source of livelihood. They contended unless the orders sought are granted they stand to suffer irreparable loss.
9. Counsel further urged the Court to allow the firm of KRK Advocates LL to come on record for the Applicants citing Article 50 of *the Constitution*, which guarantees the right to a fair hearing and legal representation.
10. On the issue of leave to file the Refence out of time, the Applicants submitted that the delay was neither due to negligence or laxity. They argued that they were unaware of the filing of the Auctioneers Bill of Costs and were only served with the Certificate of Cost after the statutory period had lapsed.
11. Reliance was placed in Leo Sila Mutiso -Vs - Rose Hellen Wangari Mwangi CA Application No. 25 of [1997] (Nairobi) wherein the Court set out the guiding principles for extension of time namely: length of the delay, the reason for the delay, the chances of success of the intended appeal and degree of prejudice to the Respondent.
12. On substantial loss, it is argued that the Applicant have a meritorious and arguable reference which has a high chance of success. Disallowing the orders, the Respondent may proceed with execution rendering the reference nugatory.



13. The Applicants submitted and expressed willingness to furnish security by depositing a quarter of the decretal amount in Court pending the determination of the reference.
14. Finally, the Applicants submitted that the Respondent will suffer no prejudice if the orders sought are granted noting that the Respondent has not demonstrated or in or indicated how they will be prejudiced.

Analysis and Determination

15. I have considered the pleadings in this issue and in a nutshell, this a matter involving an Auctioneers Bill of Costs dated 4th August, 2025 in Molo Misc. Application No. E015 of 2025. The Bill was taxed at Kshs 468,860. The Applicant herein seek to file a Refence to taxed Bill of Costs out of time and to stay execution of the decree.
16. The Application is unopposed. An Affidavit of Service on record sworn by William Juma Magero on 24th October 2025 confirms service of this Application and the Courts direction upon the Respondent via email address braveauctioneers@gmail.com.
17. Although the Application is not opposed this Court duty bound to consider it on its merits.
18. The issues for determination are whether the Applicants have placed before this Court enough material to warrant enlargement of the time within which to file a Refence and whether stay of execution of the decree dated 4th September, 2025 should issue.
19. On the first issue, the Rules under Rule 55 (4) of the Auctioneers Rules provides that an appeal from a decision of a Registrar or a Magistrate or the Board shall be made by way of Chamber Summons, within 7 days of the decision.
20. This Court has power under Section 95 of the *Civil Procedure Act* and Order 50 Rule 6 of the Civil Procedure Rules to enlarge time for doing any act prescribed by the Rules even of the time originally expired.
21. Section 95 of the *Civil Procedure Act* provides thus: -

“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.”
22. Further Order 50 Rule 6 of the Civil Procedure Rules provides:-

“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 party making such application, unless the court orders otherwise.”
23. The Supreme Court in Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others [2014] KESC 12 (KLR). The Supreme Court laid down guiding principles for extension of time, emphasizing discretion, reasonableness of delay, and prejudice. Further the High Court in the case of Mercy Kalya



t/a Kalya Auctioneers v Koskei [2024] KEHC 4917 (KLR) reinforced that taxation proceedings are adversarial, but Courts may enlarge time for filing a Reference if sufficient cause is shown.

24. The take away from the statutory provisions and the cited authorities is that the discretion to extend time to appeal any decision, is both a statutory provision and an equitable remedy. The Applicants have to demonstrate good faith and act equitably. The Court also has to consider the length of delay, reason for delay, prejudice to the Respondent, if any and the interest of justice.
25. The Bill was taxed on 4th September, 2025 the instant Application was filed on 6th October 2025. The Applicants have not stated when exactly they were served with the Certificate of Taxed Costs and Decree both dated 4th September, 2025 but contend that they moved Court immediately after service. The Respondent did not file a Response to clarify the position.
26. The statutory Seven (7) day period lapsed on or about 10th September, 2025. This Application filed on 6th October, 2025 was delayed by less than a month. The Applicants contend that the Bill of Costs was taxed ex-parte on 4th September, 2025. Their explanation for the absence and failure to file a response is lack of knowledge of the existence of the proceedings.
27. The Applicants further state that they were served with the Certificate of Costs out of time after the lapse of the statutory period prescribed for filing a reference necessitating the present Application.
28. Applications for taxation are treated like any other civil application; they must follow due process including service. Service to the opposing party is mandatory to ensure fairness and compliance with the right to be heard. If there is no evidence of service, taxation ex-parte would be considered irregular and procedurally defective.
29. This Court is not inclined to accept the explanation afforded by the Applicants concerning the delay, absence of service or lack of knowledge of the taxation proceedings. Nonetheless, in the absence of any response or contrary evidence from the Respondent or the prejudice likely to be met, this Court is constrained to proceed on the basis that the Applicants' account remains unchallenged and must therefore be treated as the correct position.
30. In the interest of justice and noting that the delay is less than a month I am satisfied that the Applicants have demonstrated sufficient cause to exercise discretion to enlarge the time within which to file their Reference against the auctioneers Bill of Costs dated 4th August, 2024.
31. On the second issue, the Applicants implore on this Court to exercise its discretion to stay the execution of the decree. Order 42 Rule 6(2) of the Civil Procedure Rules provides:
 - “(2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
32. The issue of delay has been addressed above there is no need to belabour it further.
33. On substantial loss, the Applicants asserted that they would suffer substantial loss since the Respondent would commence execution rendering the reference nugatory and that execution would prejudice the Applicants.



34. Courts cannot overemphasize that execution is a lawful process. Threat to execute is not in itself considered substantial loss. Demonstrable prejudice beyond the ordinary consequences of execution can justify Court's intervention See James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR.
35. Be that as it may, if the Auctioneer's Bill of Costs was taxed ex-parte, the Applicants stand to suffer prejudice. The taxed amount is not a small amount and allowing the Respondent to proceed with execution would deny the Applicants their right to be heard and therefore render the intended Reference nugatory.
36. On the issue of security for due performance, the Applicants did not offer any security in the sworn affidavit. However, in their submissions, they indicated the willingness to deposit a quarter of the decretal amount in Court.
37. It must be emphasized that submissions are not declarations but arguments or positions advanced to persuade the Court. Submissions do not carry the force of facts unlike in a statement made under oath. The Applicants have fallen short in satisfaction of this threshold.
38. Having stated the foregoing, Article 50 of the Constitution guarantees the right to fair hearing. Proceeding ex-parte without service denies the opposing party this right. This Court is guided by Article 50 of the Constitution which guarantees every party the right to a fair hearing, as well as Section 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules which empowers the Court to enlarge time where sufficient cause has been shown.
39. Further, the rules of natural justice dictate that no party should be condemned unheard. In the present circumstances, proceeding with execution on the basis of an ex-parte taxation without affording the Applicants an opportunity to contest the Bill of Costs would occasion prejudice and offend these principles.
40. Consequently, I find merit in the Application and direct follows:-
 - i. The Applicants are hereby granted leave to file a Reference out of time against the taxed Costs delivered on 4th September, 2025 in Molo Misc Application No. E015 of 2025..
 - ii. The Reference shall be filed within fourteen (14) days from the date of this Ruling.
 - iii. In order to preserve the substratum of the intended Reference, there shall be a stay of execution of the decree dated 4th September 2025 in Molo Misc Application No. E015 of 2025 pending the hearing and determination of the Reference.
 - iv. Costs of this Application shall abide the outcome of the Reference.

It is so ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 29TH DAY OF JANUARY, 2026

MOHOCHI S.M

JUDGE

