



**Okumu t/a Bob Okumu & Advocates v Njoroge (Miscellaneous Application E050 of 2024)
[2026] KEHC 595 (KLR) (Constitutional and Human Rights) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 595 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
MISCELLANEOUS APPLICATION E050 OF 2024
LN MUGAMBI, J
JANUARY 29, 2026**

BETWEEN

BOB OKUMU T/A BOB OKUMU & ADVOCATES ADVOCATE

AND

MUTURI NJOROGE CLIENT

RULING

Introduction

1. By a Chamber Summons Application dated 16th April 2025, the Client/Respondent herein seeks Orders that:
 - i. Spent.
 - ii. This Court be pleased to grant leave to the firm of Monanda Morang'a & Associates Advocates to come on record for the Client/Respondent for purposes of this application and all subsequent proceedings.
 - iii. This Court be pleased to grant a temporary stay of execution of the ruling and/or decree arising from the ruling delivered on 1st April, 2025 and the resultant warrants of attachment dated 7th April, 2025 and Proclamation Notice dated 14th April, 2025, pending the hearing and determination of this application.
 - iv. This Court be pleased to stay execution of the taxed costs in the Advocate-Client Bill of Costs dated 22nd November 2024, pending the hearing and determination of the intended reference.



- v. This Court be pleased to grant leave to the Client/Respondent to file a response and/or Reference out of time against the Ruling on the Advocate/Client Bill of Costs dated 1st April, 2025, pursuant to Rule 11 of the Advocates (Remuneration) Order.
- vi. The warrants of attachment dated 7th April, 2025 and the proclamation by Icon Auctioneers dated 14th April, 2025 be set aside forthwith.
- vii. The costs of this application be provided for.

Client's Case

2. The Application is supported by the grounds on the face of the Application and the Client's Supporting Affidavit of even date.
3. The Advocate filed an Advocate – Client Bill of Costs dated 22nd November 2024 claiming Kshs.619,150/-. In a ruling dated 1/4/2025, the Bill was taxed by the Taxing Officer, Hon. Onkoba at Kshs.279,100/- in her Ruling dated 1st April 2025.
4. The Client depones that when the Advocate filed the said Bill of Costs, he was unable to file his response therein as he was not represented by Counsel at the time. As such, he was unable to appreciate the strict timelines so as to act accordingly. He emphasizes thus that the delay in making his response was not deliberate.
5. He further states that the Advocate went ahead and extracted warrants of attachment dated 7th April 2025 and instructed Icon Auctioneers to proclaim various goods from his matrimonial home on 14th April 2025. He notes that he was issued with a 7 (seven) day notice period in that regard.
6. He protests the taxation and execution on grounds that he had made prior payments to the Advocate amounting to Ksh.178,000/- which was not disclosed to the Court during taxation and was thus not taken into account during the said determination.
7. Moreover, that the Advocate did not prosecute the matter to its conclusion thus the amount sought is grossly exaggerated and unjustified.
8. He also protests that the proclaimed goods include items that belong to his wife and children. He decries thus that the intended execution will cause irreparable harm and hardship on innocent bystanders who are not party to these proceedings. He asserts therefore that unless the sought orders are granted he stands to suffer great prejudice and loss of the right to be heard.

Advocate's Case

9. In response to the Application, the Advocate filed his Replying Affidavit sworn on 13th May 2025.
10. Reiterating the facts of this case, Counsel avers that the Client failed to issue a response to his Bill of Costs, which he served on him on 6th February 2025. In addition, he states that the Client disregarded the numerous mention and hearing dates served upon him.
11. He states that he thereafter served the Client with the impugned Ruling which he never bothered to respond to the same. On 7th April 2025, he extracted the warrants of attachment which were executed against the Client's property to recover the taxed costs.
12. He depones that the payments that were made by the Client prior to the taxation were in reference to other matters in which he had represented the Client and is thus unrelated to the instant matter. One of those matters is Milimani SCCC No. E6605 of 2023. Other instructions included conducting due



diligence on a company called Meron Limited and a demand for the release of 4 minibuses belonging to Tassel Ent. Limited from Metro Trans E.A. Limited.

13. He asserts that in view of the instant matter, he filed supporting documentation annexed to the impugned Bill of Costs. He notes that these documents confirm that he actively prosecuted the matter to its logical end wherein a Judgment was issued as a result.
14. He maintains that the Client neglected and abandoned to come on record so as to respond to his Bill of Costs yet now seeks to have the same set aside.
15. In his opinion, no grounds have been made to justify issuance of the said orders. He contends that the Client has been indolent in defending his matter and as such this Court ought not to indulge him. He adds that this Application is a blatant abuse of the Court process and will be prejudiced if it is allowed.

Client's Submissions

16. No submissions were made by the client as there is no trace of the same in the Court file and Court Online Platform (CTS).

Advocate's Submissions

17. In opposition to the Application, the Advocate filed submissions dated 23rd July 2025 and set out the issue for determination as: whether the Applicant should be granted leave to file a reference out of time and whether there should be stay of execution pending hearing and determination of the intended reference.
18. Counsel submitted that as is evident from the facts of this case, the Client was served with the Bill of Costs and subsequent mention dates and hearing dates but failed to appear in Court to make his case. Counsel stated that it is trite law that equity aids the vigilant which the Client was not.
19. That said, Counsel submitted that the Application is defective and an abuse of the Court process as a Ruling on Taxation can only be ventilated under Paragraph 11 of the Advocates Remuneration Order. In essence, a party who objects to the decision of the taxing officer, may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects. The Taxing Officer under Paragraph 11(2) is then required to issue written reasons for the decision.
20. Counsel asserts that this procedure was not followed by the Client. Additionally, Counsel notes that the intended reference is not annexed to the Application to aid the Court assess if it is merited and further the Client did not demonstrate in the Application, the items he intends to object to.
21. According to Counsel, the instant Application is a ploy to frustrate the process of recovery of legal fees for services rendered and delay the settlement. He added that the Client had not afforded the Court a reasonable explanation for the delay in filing the objection and or the reference.
22. To buttress his argument, Counsel relied in *County Executive of Kisumu v County Government of Kisumu and 8 Others* [2017] eKLR where it was held that:

“It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the *Nicholas Salat* case to which all the parties herein have relied upon. The Court delineated the following as “the underlying principles that a Court should consider in exercise of such discretion:



- i. 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;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
23. On the second issue, Counsel submitted that Order 42 Rule 6 of the Civil Procedure Rules, 2010 obligates a party seeking a stay of execution to satisfy the conditions set out in Order 42 Rule 6(2), being that substantial loss may result to the applicant unless the order is made; that the application has been made without unreasonable delay and that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the Applicant has been given, as also echoed in *Antoine Ndiaye vs African Virtual University* [2015] eKLR.
 24. Comparable reliance was placed in *Tropical Commodities Suppliers Ltd and Others vs. International Credit Bank Limited (in liquidation)* (2004) E.A. LR 331, *Masisi Mwita vs. Damaris Wanjiku Njeri* [2016] eKLR, *Equity Bank Ltd vs. Taiga Adams Company Ltd*, [2006] eKLR, *James Wangalwa & Another vs Agnes Naliaka Cheseto* [2012] eKLR and *Samvir Trustee Limited vs Guardian Bank Limited Nairobi (Milimani)* HCCC 795 of 1997.
 25. Counsel submitted that while the Client had asserted that some of the proclaimed assets belong to his wife and children, he did not prove the substantial loss or that the proclaimed assets do not belong to him. Counsel stressed that execution is a lawful process and so not a ground for granting stay of execution. As such, Counsel stressed that the Client is required to show that the execution will irreparably harm him to justify issuance of the orders. Counsel maintained that the Client had failed to satisfy the set threshold.
 26. Equally, Counsel submitted that the Client had been indolent in presenting his case against the filed Bill of Costs. Counsel stressed that this delay was unreasonable. Counsel relied in *Jaber Mohsen Ali & Another v Priscillah Boit & Another E & L No. 200 of 2012 (2014)* eKLR where the Court stated that what is unreasonable delay is dependent on the circumstances of each case. That even one day after Judgment/Ruling could be unreasonable delay depending on the Judgment/Ruling of the Court and any order given thereafter.
 27. Similar reliance was placed on *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR.



28. Furthermore, Counsel submitted that the Client had failed to provide security as envisaged under Order 42 Rule 6 of the Civil Procedure Rules. Reliance was placed in *Arun C. Sharma v. Ashana Raikundalia t/a Rairundalia & Co. Advocates & 2 others* [2014] eKLR where it was held that:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor.... Civil process is quite different because in civil process the Judgment is like a debt hence the applicants become and are Judgment Debtors in relation to the Respondent. That is why any security given under Order 42 Rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.”

Analysis and Determination

29. It is my humble view that the issues that arise for determination in this matter are:
- i. Whether this Court should extend the time for filing of a reference in the circumstances of this case.
 - ii. Whether or not this Court should grant the stay of execution order.

Whether this Court should extend the time for filing of a reference in the circumstances of this case.

30. The legal foundation of making such an application is provided for under Rule 11 of the Advocates (Remuneration) Order, 1962. This Rule gives the Court discretion to extend time for filing of a reference. This Rule provides as follows:

Objection to decision on taxation and appeal to Court of Appeal.

1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2), [and] may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
5. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by Chamber Summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.



31. The Supreme Court in the case of County Executive of Kisumu v County Government of Kisumu & 8 others [2017] KESC 16 (KLR) outlined the principles to be considered in extension of time as follows:

“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as:

“the under-lying principles that a Court should consider in exercise of such discretion:

- i. 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;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

32. The Court in Republic v Kenyatta University & another Ex parte Wellington Kihato Wamburu [2018] KEHC 10076 (KLR) equally observed as follows:

“16. Clearly, there is a limitation period with respect to the time when a reference should be filed. My understanding of the scheme of Rule 11 (1) of the Advocates Remuneration Order is that the expiration of the period of limitation prescribed above for filing a reference gives rise to a right in favour of the Certificate of Taxation to treat the same as binding between the parties. In other words, when the period of limitation prescribed has expired the holder of the Certificate of Costs obtains a benefit under the law to treat it as beyond challenge, and this legal right which accrues by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is



that if sufficient cause for excusing delay is shown discretion is given to the Court to disregard the delay and admit the reference out of time. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

17. However, it is necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court. If sufficient cause is not proved nothing further has to be done; the application for excusing delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration.
 18. Far away from home but in a jurisdiction like ours, a common law jurisdiction, there is a case authority that is instructive on what a court user should do where there has been a delay before such delay is condoned. Thus, in *Union of India vs. Tata Yodogawa Ltd*, the Court while granting some latitude in relation to condonation of delay, still held that there must be some way or attempt to explain the cause for such delay, and in absence of an explanation, the application for condonation of delay was therefore dismissed.”
33. Correspondingly the Court in *County Government of Tana River v Miller and Company Advocates*[2022] KEHC 17265 (KLR) discoursed as follows:
- “The Court enjoys wide discretionary powers under the *Civil Procedure Act* and Rules more specifically as stipulated in section 1 (A), 1(B),3(A), section 79 (G) on overriding objective, the inherent jurisdiction and on account of sufficient cause to exercise jurisdiction in matters of this nature for the interest of justice. It is noted that paragraph 11 (1) (2) of the Advocates Remuneration Order do not speak to the relevant factors that the Court should consider when exercising its discretion on whether or not an extension of time should be granted. Guidance must therefore be solved from case law in *Paul Wanjohi Mathenge V Duncan Gichane Mathenge*[2013]Eklr the Court of Appeal while referring to other authorities observed;-
- “The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this



Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi V Charles Gichina Mwangi – Civil Application No. Nai 26 of 2004*, this Court held; -

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi V Kenya Airways Ltd [2003] KLR 486* in which this Court stated;-Over the years, the Court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi – Civil Application No Nai 255 of 1997*(unreported), the Court expressed itself thus; -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reasons for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

As stated in the above cases the length of the delay and reasons for non-compliance of the time lines are important factors to influence the exercise of discretion of the Court...”

34. The main concern of the Client’s case is to be given an opportunity to file his reference and objection to the impugned Bill of Costs, out of time. The Advocate opposes the application on two major grounds. That the Client has been indolent in pursuing his right and two, that the Client in making this Application failed to follow the procedure set out in law.
35. Rule 11 of the Advocates Remuneration Order provides that a dissatisfied party should object to the Taxing Officer’s decision within 14 days in writing, and the Taxing Officer, shall then give reasons for the decision she made.
36. Upon receipt of the reasons, the party may within 14 days file his objection before a Judge setting out the grounds of objection.
37. Further, the Court has discretion to extend time for filing a reference even after the lapse of the 14-day period set for the reference from the Taxing Officer’s decision.
38. This Court’s jurisdiction to hear an application for reference is grounded on due compliance with Rule 11(1) and (2) of the Advocate’s Remuneration Order. A certificate of taxation issued by the Taxing Officer as such is appealable to the High Court by way of reference as provided for under the Rule.
39. In this matter, the Client has not presented or annexed any document that shows he issued any notice to the Taxing Officer of his request for reasons for the Ruling and his intention to file a reference against



it. Nevertheless, the Ruling clearly indicates that the Taxing Officer had already given reasons even from the title itself, which reads: ‘Ruling and Reasons for Taxation on the Applicant’s Advocate-Client Bill of Costs dated 22nd November 2024’ and which are set out in the body of the text.

40. In *Ahmednasir Abdikadir & Company Advocate vs National Bank of Kenya Ltd (2)* [2006] 1 EA A5 the Court observed as follows in this regard:

“Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wished to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file a reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in, the ruling, there is no need to seek for further reasons simply because of the unfortunate wording of sub Rule (2) of Rule 11 of the Advocate Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”

41. Additionally, in *Evans Thiga Gaturu Advocate V KCB Ltd* [2012] KEHC 4274 (KLR) the Court stated that:

“However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish reasons. The sufficiency or otherwise is not necessarily a bar to the filing of the reference since that insufficiency may be the very reason for preferring the reference.”

42. The record further confirms that following delivery of the impugned Ruling on 1st April 2025, the Client filed the instant Application on 16th April 2025. The Client accordingly delayed in filing this Application by 2 days. A delay of two days does not in my view qualify as inordinate delay. I thus opine that an extension of time to file a reference as permitted by Rule 11(4) of the Advocates Remuneration Order, 2009 is therefore warranted.

Whether or not this Court should grant a stay of execution

43. In *Jamii Bora Bank Limited & another v Samuel Wambugu Ndirangu* [2022] KEHC 1845 (KLR) the Court explained the principles applicable in considering an application of stay of execution as follows:

“The principles upon which the court may stay the execution of orders... were enunciated in *Butt vs Rent Restriction Tribunal* [1979] the Court of Appeal stated what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that: -

- i. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
- ii. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge’s discretion.
- iii. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.



- iv. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements...”

44. The discretionary nature of a stay order was further expounded by the Court of Appeal in *Absalom Dova v Tarbo Transporters* [2013] eKLR as cited in *Al-Riaz International Ltd & another vs Munini* (2023) KEHC 22221 (KLR) as follows:

“...Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory... This Court while balancing these two interests, must satisfy itself that that no party would suffer undue prejudice. The Court of Appeal in *Absalom Dova v Tarbo Transporters* [2013] eKLR while enunciating this principle stated as follows: -“...The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The court in balancing the two competing rights focuses on their reconciliation...”

45. The Client in the instant Application urges that issuance of the stay of execution order is necessary as first, some of the property attached belongs to his wife and children and second, that the award is unfounded. The Advocate argues that Client has failed to meet the threshold set for grant of stay.

46. For an order of stay to issue, three ingredients must be satisfied; namely: the Application should have been filed without unreasonable delay; substantial loss has been demonstrated and finally, security has been supplied.

47. The Court has already disposed of the first of these elements. It has found already that the institution of the Application 2 days after expiry of 14 days period provided is not unreasonable delay in the circumstances of this case.

48. On the second point, substantial loss, the Client argued that the execution proceedings would be prejudicial to him as some of the property attached, belong to the wife and children. Second, he stated that he had already paid Kshs.178,000/- to the Advocate in legal fees which was not considered.

49. A perusal of the evidence adduced shows the list of items that have been attached and various payments made to the Advocate. Although the Advocate disputes that the payment was in respect of instructions for other matters involving the client, this is an issue that requires to be heard to ascertain the actual position. That also goes to the issue that the attached property belongs to non-parties in these proceedings.

50. On the issue of security, the Client is silent on the matter despite seeking a stay of execution. The Bill was taxed at Kshs.279,100/- in the impugned Ruling. The Court has to balance the rights of both parties being the Client’s right to be heard vis-a-vis the Advocate’s right to enjoy the fruits of his judgment.

51. I thus allow the application on the following terms:

- a. The Client is granted leave to file and serve the Taxation Reference within the next 14 days from the date of this order upon meeting the following other conditions:



- b. Leave is conditional upon the Client first depositing into this Court half of the taxed costs amounting to Kshs. 139,550/- to remain in the custody of this Court as security, and to be held until the Taxation Reference is fully heard and determined.
- c. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH JANUARY, 2026.

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L N MUGAMBI

JUDGE

