

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**CIVIL MISCELLANEOUS (REFERENCE) APPLICATION NO E011 OF**  
**2025**

**GUARDIAN COACH  
LIMITED.....APPLICANT**

**VERSUS**

**MILDRED MUHONJA SITACHE  
AND MILTON KASIKAO (Suing as  
the Administrators of the Estate of  
AUGUMEND KAYIMBA (Deceased)**

**.....RESPONDENTS**

**RULING**

**INTRODUCTION**

1. In its Chamber Summons dated 7<sup>th</sup> March 2025 and filed on 11<sup>th</sup> March 2025, the Applicant herein sought that it be granted leave to file a Taxation Reference before this court against the assessment of costs delivered on 22<sup>nd</sup> October 2024 in **Vihiga CMCC No 64 of 2022**.
2. He also sought the order that the Application for Reference annexed hereto be deemed as duly file and served upon payment of the requisite fees.
3. Its Advocate, Theldred Wesonga, swore an Affidavit in support of the said Chamber Summons and its behalf. It averred that she was aware that on 22<sup>nd</sup> October 2024, the court in **Vihiga CMCC No 64 of 2022** delivered its Ruling on the Plaintiff Party & Party Bill of Costs dated 24<sup>th</sup> November 2023 and no stay of execution was granted.

4. It contended that it was aggrieved and dissatisfied by the said Ruling and wished to seek leave of court to file a Reference application. It added that the Notice of Objection was filed on 29<sup>th</sup> October 2024.
5. It asserted that the Respondent's Bill of Costs was not subjected to 50% liability and that the delay in filing the Reference on the said Trial Court assessed costs was occasioned by the internal wrangles between Direct line Insurance Company Limited and its shareholders which led to system failure and freezing of the financial accounts therefore the delay in the processing of payments of any court documents. It added that the wrangles gave rise to a court case **Nairobi HCCC No E328 of 2024 (Commercial & Tax Division)**.
6. It argued that unless this application was allowed, it would be condemned unheard and the application and the reference would be rendered nugatory as the Respondent shall proceed with execution against it as there were no orders of stay of execution.
7. In opposition to the Applicant's application Okwaro Winnie Anono, the Respondents' Advocate swore a Replying Affidavit on 13<sup>th</sup> March 2025 on behalf of the Respondents herein. The Respondents averred that the application was destitute of any merit, misplaced and brought in bad faith with the aim of delaying the cause of justice.
8. They asserted that the Judgment at the Trial Court in the matter was delivered on 3<sup>rd</sup> November 2023 and that the Applicant lodge an

appeal against part of the said Judgment in **HCCA No E033 of 2023** but later chose to settle the decretal sum and withdrew the said appeal with no further orders as to costs through a Notice dated 6<sup>th</sup> May 2024.

9. They contended that they served a Party-to-party Bill of Costs dated 24<sup>th</sup> November 2023 and a Notice of Assessment of the same upon the Applicant's counsel and that on 30<sup>th</sup> July 2024, the Applicant sought for seven (7) days to file submissions on the Bill which application was allowed. They pointed out that on 28<sup>th</sup> August 2024, the Applicant sought for more time to file submissions on the Bill which application was opposed and subsequently denied by court resulting in the delivery of the Ruling on 22<sup>nd</sup> October 2024.

10. They were emphatic that the Applicant failed to comply with the court's directions several times and was absent from court when the Ruling was delivered. They argued that the reasons that it advanced did not show sufficient cause so as to be allowed to file a reference. They added that it was only when they made an attempt to execute the assessed Party and Party costs that it purported to file an application to seek leave to file a reference.

11. They further contended that the instant application was an appeal disguised as taxation reference. They stated that the court should not be seen to assist the indolent. They were emphatic that the Applicant's delay in presenting this reference was inordinate and was brought with the intention of depriving them the fruits of litigation. They added that the application was guilty of laches, half-

truths, material falsehoods and frivolous with no chances of succeeding and hence, urged the court to dismiss the same with costs.

12. When the matter came up for directions on 5<sup>th</sup> June 2025, the Applicant indicated that it would not be filing Written Submissions. The Respondents' Written Submissions were dated 8<sup>th</sup> April 2025 and filed on 23<sup>rd</sup> May 2025. This Ruling is, therefore, based on parties' affidavit evidence and the said Respondents' Written Submissions only.

### **LEGAL ANALYSIS**

13. The Respondents placed reliance on the case of **County Executive of Kisumu vs County Government of Kisumu & 8 Others[2017]eKLR** where the Supreme Court held that it was trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the court.
14. They reiterated the averments in their Replying Affidavit and asserted that despite several notices, the Applicant failed to make an appearance in court either physically or virtually. They argued that from its conduct, it was clear that it was the architect of its own misfortune. They added that despite claims of internal wrangles between Directline Insurance Company Limited and its shareholders as narrated by the Applicant, no official communication to that effect had been sent to court or to their counsel.

15. They were emphatic that the Applicant had sufficient time to file an objection to their Bill of Costs hence this court should not be seen to reward its indolence. They asserted that the application was an afterthought as it had been filed after withdrawal of an appeal. They added that the Applicant had not afforded a reasonable explanation for the delay in filing the taxation reference.

16. Paragraph 11(1) and (2) of the Advocates Remuneration Order provides as follows:-

**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.”**

17. Indeed, in exercising its discretion to allow an application seeking extension to file a reference out of time, a court had to be satisfied that the omission to file the same within time was excusable. In other words, there had to be a plausible explanation for the delay in filing the reference.

18. It was apparent from the court record that the Ruling the Applicant intended to appeal against was delivered on 22<sup>nd</sup> October

2024. The present application was filed on 11<sup>th</sup> March 2025. About four (4) months and eighteen (18) days had since passed. This was not an inordinately long period.

19. Going further, the Applicant pointed out that the delay in filing the Reference was occasioned by the internal wrangles between its insurance company and its shareholders. It annexed a Ruling in the case **Nairobi HCCC No E328 of 2024 (Commercial & Tax Division)** to that effect.

20. It was trite law that every party had a right to access any court or tribunal to have its dispute heard and determined in accordance with Article 50(1) of the Constitution of Kenya, 2010. Even where a party had delayed in doing an act, there was always a provision that would give it reprieve to seek justice.

21. Notably, Order 50 Rule 6 of Civil Procedure Rules, 2010 empowers the court to enlarge the time to do a particular act. The said Order 50 Rule 6 of Civil Procedure Rules stipulates as follows:-

**“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”.**

22. All that this court was expected to do at this stage was to consider if the Applicant herein had demonstrated that it had arguable grounds of appeal as against the impugned Ruling. It was under no duty to consider the merits or otherwise of the Reference as that was strictly under the purview of the court that was to hear and determine the reference.

23. While considering whether or not to grant an order for extension to do any act, the court was also required to consider if the opposing side would suffer any prejudice if extension of time was granted. This court did not see any prejudice that the Respondents would suffer or were likely to suffer if the Applicant herein exercised its constitutional right of appeal. If there was any prejudice, then it did not demonstrate the same.

24. Taking all the factors hereinabove into account, it was the considered view of this court that it was **in the interests of justice** (emphasis court) that the Applicant be given an opportunity to have its Reference heard on merit as it would suffer prejudice if it were denied an opportunity to fully present its Reference to be heard on merit.

25. Indeed, the power to grant orders **in the interest of justice and/or for the ends of justice** (emphasis court) is well captured in Section 3A of the Civil Procedure Act that states that: -

**“Nothing in the Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice (emphasis court) or to prevent abuse of the process of the court.”**

### **DISPOSITION**

26. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Chamber Summons application dated 7<sup>th</sup> March 2025 and filed on 11<sup>th</sup> March 2025 was merited and the same be and is hereby allowed in terms of Prayer No (3) and (4) therein on the following conditions: -

- 1. THAT the Applicant be and is hereby granted leave to file a Reference against the decision of the Taxing Master of 22<sup>nd</sup> October 2024.**
- 2. THAT the Applicant be and is hereby directed to file and serve its Notice of Objection within fourteen (14) days from the date of this Ruling.**
- 3. THAT the Applicant be and is hereby directed to file and serve its Reference within fourteen (14) days after the Taxing Officer forwards to it the reasons for her decision.**
- 4. THAT in the event the Applicant fails to comply with Paragraph 26(2) and (3), the Respondents will be at liberty to commence legal proceedings for recovery of the taxed costs.**

**5. THAT this matter will be mentioned on 13<sup>th</sup> May 2026 to confirm compliance of the order in Paragraph 26 (2) and (3) hereinabove and/or for further orders and/or directions.**

**5. Costs of the application herein will be in the cause.**

27. It is so ordered.

**DATED and DELIVERED at VIHIGA this 23<sup>rd</sup> day of February 2026**

**J. KAMAU  
JUDGE**