

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC MISC. APPLICATION NO. E011 OF 2022

KIPNGETICH KALYA KONES

(Suing as the administrator of the estate of Kipkalya Kiprono Kones).....
APPLICANT

VERSUS

WILSON KIPLANGAT KONES.....1ST
RESPONDENT

HEGEONS AUCTIONEERS.....2ND
RESPONDENT

RULING.

Introduction.

- 1.** This ruling is in respect of the Applicant's Notice of Motion application dated 7th April, 2025. The application is expressed to be brought under **Article 159(2)** of the Constitution of Kenya, **Sections 1A, 1B & 63(e)** of the **Civil Procedure Act**, **Section 51(2)** of the Advocates Act, **Order 22 Rule 22** and **Order 51 Rule 1** of the **Civil Procedure Rules**.

2. The application seeks the following prayers;

a. *Spent*

b. *That leave be granted to the firm of M/S H&K Law Advocates to come on record on behalf of the Plaintiff/Applicant (sic).*

c. *Spent*

d. *Spent*

e. *The Honourable Court be pleased to issue a declaration that the warrants of attachment issued by the Court on 21st February, 2025 to the 2nd Respondent and proclamation dated 18th March, 2025 are premature, illegal, un procedural and unlawful as the same were obtained fraudulently and arose from a non-existent judgement and/or decree of this Court.*

f. *That this Honourable Court be pleased, to issue an order vacating, varying and/or setting aside the ruling of the Honourable Deputy Registrar dated 12th June, 2024 and the resultant Certificate of costs*

dated 27th June, 2024, together with all consequential orders, and proceedings arising therefrom, on account of the procedural and substantive irregularities attended thereto.

g. That this Honourable Court be pleased to grant leave to the Applicant to file a Taxation Reference out of time before this Honourable Court, challenging the ruling on the assessed costs as delivered on 12th June, 2024, on such terms as the Court may deem just and expedient in the circumstances.

h. The Court grants any other interim relief as it deems fit in the interest of justice.

i. The 1st Respondent be condemned to pay costs of the application together with Auctioneer's charges.

- 3.** The application is based on the grounds on its face and the supporting affidavit of **Kipngetich Kalya Kones** sworn on 7th April, 2025.

Factual Background.

4. The Applicant commenced the present proceedings vide the Chamber Summons application dated 20th June, 2022 where he sought that the Court sets aside the Taxing Officer's decision delivered on 13th May, 2022 on the Amended Party and Party Bill of costs dated 23rd February, 2022.
5. The Court delivered a ruling on the said application on 13th April, 2023 and issued the following orders;

1. Save for items No. 59 and 60, the taxation of the Respondent's Amended Party and Party Bill of Costs amended on 23rd February, 2022 and all the consequential orders are hereby set aside.

2. The said bill of costs shall be and is hereby remitted back to another Deputy Registrar to be taxed afresh on the items objected to by the Applicant.

3. Each party shall bear its own costs for this Application.

6. The Amended Party and Party Bill of costs dated 23rd February, 2022 was taxed on 12th June, 2024 at Kshs. 4,399,829/=.
7. The application under consideration first came up for hearing on 14th April, 2025 when the Court directed that it be served upon the Respondents.
8. The application came up for hearing on 30th June, 2025 which hearing was adjourned to 29th July, 2025. On the said date, the Court issued directions that the application be canvassed by way of written submissions.
9. It was mentioned severally to confirm filing of submissions before it was reserved for ruling on 4th December, 2025.

The Applicant's Contention.

10. The Applicant contends that the 1st Respondent instructed the 2nd Respondent to attach his movable assets. He goes on to state that the 2nd Respondent obtained warrants of attachment dated 21st February, 2025.

11. The Applicant also contends that vide a proclamation dated 18th March, 2025, the 2nd Respondent proclaimed the following assets;

a. *Twenty-Five bulls.*

b. *Seventeen cows*

c. *Eight calves*

d. *Assorted Households (sic)*

e. *Movable Property i.e. Motor Vehicles*

12. The Applicant further contends that the warrants of attachment are in relation to the ruling and certificate of costs that arose from the ruling delivered in Kericho HC Misc. Application No. 11B of 2022 (sic).

13. It is the Applicant's contention that he is advised by his advocates on record that the warrants of attachment and/or

proclamation are premature as the 1st Respondent has not obtained judgement and/or decree of this Court.

- 14.** It is also the Applicant's contention that he is advised by his advocates on record that a Certificate of Costs does not in itself constitute a judgement of the Court for purposes of execution. He goes on to state that it therefore remains questionable how the Respondents procured warrants of attachment of his property.
- 15.** It is further the Applicant's contention that the issuance of warrants of attachment premised on the said Certificate of Costs is procedurally improper, legally untenable and a misapplication of the law governing execution proceedings.
- 16.** The Applicant contends that the 1st Respondent ought to have filed an application and sought for the Certificate of Costs to be adopted as a judgement of the Court before commencing execution.

- 17.** The Applicant reiterates that since the Certificate of Costs has not been adopted as the judgement of the Court, there is no legal basis for the execution process that has been initiated against him.
- 18.** The Applicant also contends that the proclamation over his movable assets is illegal and in direct contravention of established legal principles. He goes on to state that the Court should therefore grant the reliefs sought in the interest of justice, fairness and equity.
- 19.** The Applicant further contends that he does not own the items listed in the proclamation notice and he is not aware of the manner in which the Respondents compiled the said list.
- 20.** It is the Applicant's contention that he only owns a limited number of basic household goods which are essential for daily sustenance and well-being of his children. He goes on to state that the attachment of these essential items will be

highly prejudicial and will potentially render him and his children destitute.

- 21.** It is also the Applicant's contention that he entered into a consent with the 1st Respondent in the presence of his Counsel that the total amount owed be reduced to kshs. 2,200,000/=.
- 22.** It is further the Applicant's contention that pursuant to the said agreement, he undertook to sell his parcel of land situated in Londiani.
- 23.** He contends that despite his best efforts, he has been unsuccessful in getting a willing buyer to facilitate the completion of the agreed settlement.
- 24.** He also contends that he wrote a letter dated 11th November, 2024 addressed to the 1st Respondent's advocates informing them that they were making progress in selling land in Londiani and sought for more time to settle the matter.

- 25.** He further contends that the 1st Respondent is aware of his predicament and therefore the warrants of attachment and proclamation are malicious.
- 26.** It is his contention that he is still keen to dispose of the land in Londiani to settle the agreed amount of kshs. 2,200,000/=.
- 27.** It is also his contention that the subject matter of the suit in Kericho ELC Case No. 34 of 2019 is LR No. 9932/3 whose value was highly contested.
- 28.** It is further his contention that the bill of costs came up for taxation on 21st February, 2023. He goes on to state that the 1st Respondent relied on a valuation report prepared by Legeno Real Estate valuers dated 28th June, 2022.
- 29.** He contends that the said valuation report was annexed to the 1st Respondent's Replying Affidavit sworn on 8th July, 2022.

- 30.** He also contends that the valuation report stated that LR No. 9932/3 was valued at Kshs. 1,500,000,000/=. He goes on to state that since his claim was for half of LR No. 9932/3, which measures 250 acres, then the value of the land would be Kshs. 750,000,000/=.
- 31.** He further contends that the Taxing Officer should not have allowed the filing of the allegedly overinflated valuation report at the reference stage of the proceedings. He goes on to state that a reference is technically an appeal and the Taxing Officer ought to have been guided by **Order 42 Rule 27** of the Civil Procedure Rules.
- 32.** It is his contention that under legal Notice No. 151 of 2020 The Stamp Duty (Valuation of Immovable Property) Regulations, a valuation report submitted in accordance with Regulation 5 shall be valid for a period of twelve months commencing from the date of approval by the Chief Government Valuer.

- 33.** It is also his contention that the valuation report dated 28th January, 2022 should have been deemed as expired by the time it was admitted by the Court in February, 2023.
- 34.** It is further his contention that any valuation report that surpassed this designated period shall be deemed as invalid and inadmissible.
- 35.** He contends that the warrants of attachment and proclamation are premature and he urges the Court to set them aside.
- 36.** He also contends that unless his application is heard on priority basis and the interim orders sought granted, the Respondents will proceed with execution.
- 37.** He further contends that he stands to suffer irreparable financial loss and damage if stay of execution orders are not granted.

38. He ends his deposition by stating that the Respondents will not be prejudiced in any way if the orders sought are granted.

The 1st Respondent's Response.

39. In response to the Applicant's application, the 1st Respondent filed a Replying Affidavit sworn on 28th July, 2025.

40. He deposes that he engaged the 2nd Respondent to pursue costs of Kshs. 4,399,829/= awarded by the Court on 12th June, 2024.

41. He also deposes that the said costs were taxed after the Court allowed a reference that was filed by the Applicant. He goes on to state that the reference was dated 20th June, 2022.

42. He further deposes that initially the Taxing Officer awarded Kshs. 20,079,769/= and upon re-taxation, the costs were taxed at kshs. 4,399,829/=.

- 43.** It is his deposition that neither him nor his advocates on record agreed to reduce the taxed costs from Kshs. 4,399,829/= to Kshs. 2,200,000/=.
- 44.** It is also his deposition that the Applicant has not demonstrated why he is seeking leave to file a reference out of time. He also states that the Applicant has failed to annex a draft reference to show which aspects of the Taxing Officer's decision he is aggrieved with.
- 45.** It is further his deposition that the process of execution of the taxed bill of costs is proper and the allegations that he did not obtain the decree is inapplicable in the present proceedings.
- 46.** He deposes that the initial proceedings were struck out since the Applicant did not have *locus standi* and therefore the said costs did not emanate from a judgement to warrant the extraction of a decree.

- 47.** He also deposes that the Applicant has filed the application under consideration as a tactic to evade payment. He goes on to state that the inordinate delay in the filing of the application under consideration is a clear indication that the Applicant was not interested in reviewing the said Certificate of Costs.
- 48.** He further deposes that the Applicant failed to file a reference within the prescribed period of time.
- 49.** It is his deposition that the Applicant has failed to demonstrate and/or show the errors or discovery of new evidence to justify review of the Certificate of Costs.
- 50.** It is also his deposition that the averments at paragraphs 2 to 29 of the affidavit in support of the application are full of falsehoods.
- 51.** He ends his deposition by urging the Court to dismiss the Applicant's application with costs.

Issues for Determination.

52. The Applicant filed his submissions on 12th October, 2025 while the 1st Respondent filed submissions on 21st October, 2025.
53. The Applicant submits on the following issues;
- a. ***Whether the warrants of attachment dated 21st February, 2025 and the proclamation dated 18th March, 2025 were lawfully issued.***
 - b. ***Whether a certificate of costs, per se constitutes a judgement or decree capable of execution.***
 - c. ***Whether the Applicant has established a proper basis for the grant of stay of execution and setting aside of the said warrants.***
 - d. ***Whether the Applicant is entitled to leave to file a Taxation Reference out of time.***

e. Who should bear the costs of this application.

- 54.** The Applicant relies on **Order 22 Rule 6** of the **Civil Procedure Rules** and reiterates that a Certificate of Costs is not a decree or a judgement.
- 55.** He also reiterates that a Certificate of Costs has to be adopted as a judgement of the Court before commencement of execution.
- 56.** The Applicant relies on **Section 51(2)** of the Advocates Act, **Kipkorir, Titoo & Kiara Advocates vs Deposit Protection Fund Board [2005] eKLR, Lubullelah & Associates Advocates vs N.K Brothers Ltd [2014] eKLR** and reiterates that since the commencement of the execution process herein is premised on a Certificate of Costs, it is procedurally flawed.

57. On the second issue, the Applicant relies on **Article 47** of the Constitution, **Order 42 Rule 27** of the Civil Procedure Rules, the judicial decision of **Republic vs Public Procurement Administrative Review Board ex - parte Syner -Chemie Ltd [2016] eKLR** and while reiterating the averments in his affidavit in support of the application submits that Taxing Officer ought not to have relied on the grossly inflated valuation report.
58. On the third issue, the Applicant reiterates he has engaged the 1st Respondent in negotiations and it is not true that he has been indolent.
59. The Applicant relies on **Paragraph 11(4)** of the Advocates (Remuneration) Order and submits that the Court has the discretion to enlarge time within which to file a reference.
60. The Applicant relies on the judicial decision of **Republic vs Minister for Lands ex parte Kithinji Murugu [2017] eKLR** and submits that Courts allow matters to be heard on

merits especially where delay is neither deliberate or contumacious.

- 61.** The Applicant relies on **Republic V. Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR** and submits that the delay in filing the reference was occasioned by the settlement negotiations, partial payments and lack of formal service of the Certificate of costs.
- 62.** The Applicant also submits that after the Auctioneers served him, he moved the Court with haste.
- 63.** The Applicant further submits that he has given a plausible, bona fide and sufficient explanation for the delay in filing the reference.
- 64.** It is the Applicant's submissions that the Court has discretion under **Order 22 Rule 22** and **Order 51 Rule 1** of the **Civil Procedure Rules** and submits that the Court has discretion to stay execution pending determination of any challenge.

The Applicant also relies on the judicial decision of **Kiprono v Cheruiyot [2021] eKLR** in support of his submissions.

- 65.** On the fourth issue, the Applicant relies on **Article 53(2)** of the Constitution, the judicial decision of **Kenya Commercial bank Ltd vs Suntra Investment Bank Ltd [2015] eKLR** and submits that the Respondents will not be prejudiced if the prayers sought are granted.
- 66.** The Applicant concludes his submissions by urging the Court to allow his application as prayed.
- 67.** The 1st Respondent reiterates the averments in his Replying Affidavit and submits on the following issues;
- a. *Whether the Applicant has met the threshold of stay of execution of warrants of attachment dated 21st February, 2025 and whether the same was obtained fraudulently and should therefore be vacated.***

b. Has the Applicant laid down any plausible reasons to be allowed leave to file a third taxation reference out of time to challenge costs that were taxed on 12th June, 2024. (sic)

c. Who should bear costs of the application.

- 68.** On the first issue, the 1st Respondent relies on the judicial decisions of **Giella vs Cassman Brown Co. Ltd** (citation not given), **Mrao Limited vs First American Bank of Kenya Ltd** (citation not given) and submits that costs were taxed on 12th June, 2024 and the Certificate of Costs issued on 27th June, 2024.
- 69.** The 1st Respondent also submits that a period of one and a half years has lapsed since the Taxing Officer delivered his decision.

70. The 1st Respondent further submits that there has therefore been inordinate delay in the filing of the application under consideration.
71. It is the 1st Respondent's submissions that the Applicant intends to file a third reference over the same bill of costs which application has been filed in bad faith with the intention to stay execution of recovery of the said costs.
72. The 1st Respondent relies on the judicial decision of **Showind Industries vs Guardian Bank Limited & another [2002] IEA 284** as was cited in **Pater Kairu Gitu vs KCB Bank Limited & another [2021] KEHC 7203 (KLR)** and urges the Court not to allow orders of stay of execution.
73. The 1st Respondent reiterates that the Applicant has not demonstrated any discovery of new evidence or error for the Court to set aside the Taxing Officer's decision.

74. The 1st Respondent also reiterates that the Applicant has not attached a draft reference nor pointed out the aspects of the Taxing Officer's decision that he is dissatisfied with.

75. The 1st Respondent further reiterates that he did not engage in any discussions to reduce the taxed costs and concludes his submissions by urging the Court to dismiss the Applicant's application with costs.

Analysis and Determination.

76. I have considered the Applicant's application, the response thereto and the rival submissions. It is my view that the following issues arise for determination;

a. Whether the firm of H&K Law should be granted leave to come on record for the Applicant.

b. Whether the Proclamation dated 18th March, 2025 and the Warrants of Attachment issued on 21st February, 2025 levied against the Applicant should be set aside.

- c. Whether the ruling delivered on 12th June, 2024, the resultant Certificate of Costs dated 27th June, 2024 together with all the consequential orders and proceedings should be set aside.**
- d. Whether the Applicant should be granted leave to file a Reference out of time.**
- e. Who should bear costs of the application.**

A. Whether the firm of H&K Law should be granted leave to come on record for the Applicant.

77. Order 9 Rule 9 of the Civil Procedure Rules provides as follows;

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming Advocate or party intending to act in person as the case may be.”

78. A perusal of the Court record shows that the Applicant was previously represented by Mutai J.K & Company Advocates.

79. I see no reason to deny leave to the firm of H&K Law to come on record for the Applicant. In any case, the said prayer is not opposed by the 1st Respondent.

B. Whether the Proclamation dated 18th March, 2025 and the Warrants of Attachment issued on 21st February, 2025 levied against the Applicant should be set aside.

- 80.** The Applicant contends that the Taxing Officer taxed the Amended Party and Party Bill of Costs dated 23rd February, 2022 on 12th June, 2024 at Kshs. 4,399,829/=.
- 81.** The Applicant also contends that thereafter he negotiated with the 1st Respondent and they agreed that he would pay him Kshs. 2,200,000/=.
- 82.** The Applicant further contends that he has been trying to sell his land in Londiani in order to pay the 1st Respondent the sum of money that they had agreed upon.
- 83.** It is the Applicant's contention that vide a Proclamation dated 18th March, 2025 the 2nd Respondent proclaimed assets that include twenty-five bulls, seventeen cows, eight calves and assorted household goods.
- 84.** It is also the Applicant's contention that the Proclamation Notice was issued after Warrants of Attachment dated 21st February, 2025 were issued.

- 85.** It is further the Applicant's contention that the proclamation and warrants of attachment were prematurely obtained as the 1st Respondent is yet to obtain a judgement and/or decree of this Court.
- 86.** The Applicant therefore seeks that they be set aside.
- 87.** The 1st Respondent on the other hand denies that there were negotiations centered around reducing the taxed costs and contends that the proclamation and warrants of attachment were issued in execution of the Certificate of Costs dated 27th June, 2024.
- 88.** The 1st Respondent also contends that it was not necessary for him to obtain decree before commencing execution.
- 89.** One of the documents attached to the affidavit in support of the application is a "*Proclamation of Attachment/Repossession/Distrainment of movable property*"

issued by the 2nd Respondent. It notifies the Applicant that the movable property listed in the schedule on the said proclamation has been attached and left in his custody for seven days. Upon the lapse of seven days, the 2nd Respondent is to move the property to his premises and sell them by public auction. The decretal amount is stated to be Kshs. 4,399,829/= and the Auctioneers Costs are stated to be Kshs. 855,350/=.

90. The Schedule of Movable Property has the following list of assets;

- a. *Twenty-Five bulls***
- b. *Seventeen Cows***
- c. *Eight Calves***
- d. *Assorted Households (sic)***
- e. *And any other moveable property i.e. Motor Vehicles.***

91. The date on the "*Proclamation of Attachment/Repossession/Distrain of movable property*" is not legible.

92. A perusal of the Court record shows that there are Warrants of Attachment of Movable Property in execution of a decree for money marked as “Civil 7D”. It is addressed to the 2nd Respondent and authorizes them to attach the property of the Applicant to recover the sum of Kshs. 4,399,829/=. The Warrants state that the 2nd Respondent is to return the warrants on or before 21st April, 2025 with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

93. In the judicial decision of **Macharia v Mutungi (Being an administrator of the Estate of the Late Maina Koine)** [2025] KEELC 36 (KLR) the Court held as follows;

“12. The Applicant’s assertion and submission was that the Respondent was executing a certificate of costs which is not a legal instrument capable of execution unless it is converted into a decree of the court. He relied on the decision in the case

of UAP Insurance Co. Ltd -vs- Alfred Mdeizi t/a Pave Auctioneers and ano (Civil Appeal 32 of 2018) (2023) KEHC 22683 (KLR) to support his argument.

13.The Respondent distinguished the decision relied on by the Applicant pointing out that the certificate of costs therein arose from the taxation of an Advocate-client Bill of Costs, whereas the certificate of costs herein was in respect to party and party costs. The Respondent relied on the decision in the case of Nyamira County Government -vs- Local Authorities provident fund (2020) eKLR, where the court was categorical that,

“As for his argument that the certificate of costs was not converted into a judgment, it is my finding that the bill of costs being one for party and party need not have been converted in order to be executed.”

14.I fully agree with the Respondent's submissions. There is no requirement for entry of judgment in respect to party and party costs. Section 51 of the Advocates Act applies only to advocate - client costs. The Applicant's assertion therefore has no basis in law. That was the only basis upon which the Applicant was challenging the warrants of attachment.

15. Consequently, the Court finds and holds that the warrants of attachment issued by this Court were procedurally and lawfully issued. There would be no justification therefore to recall and or set aside the warrants of attachment.”(Emphasis mine)

- 94.** The Applicant is seeking that the Court sets aside the Warrants of Attachment and the Proclamation issued on the ground that the Certificate of Costs dated 27th June, 2024 was not adopted as a judgement of the Court.

- 95.** In the judicial decision of **Macharia v Mutungi (Being an administrator of the Estate of the Late Maina Koine)** (supra) the Court held that there is no requirement for entry of judgment in respect to party and party costs.
- 96.** In the present matter, the bill of costs dated 23rd February, 2022 which were subject of the ruling delivered on 12th June, 2024 were with respect to party and party costs.
- 97.** Having found that there is no requirement for entry of judgement in respect of party and party bill of costs, it follows that the Warrants of Attachment of Movable Property in execution of a decree for money and the Proclamation were lawfully issued.

C. Whether the ruling delivered on 12th June, 2024, the resultant Certificate of Costs dated 27th June, 2024 together with all the consequential orders and proceedings should be set aside.

98. Under prayer (f) of the application under consideration, the Applicant is seeking that the Court sets aside the ruling delivered on 12th June, 2024, the resultant Certificate of Costs together with all consequential orders.

99. The 1st Respondent did not address this issue in his response and/or submissions.

100. As stated, in the ruling delivered on 12th June, 2024, the Taxing Officer taxed the Amended Party and Party Bill of Costs dated 23rd February, 2022 at Kshs. 4,399,829/=.

101. In **Invesco Assurance Co. Limited v Chigiti & Chigiti Advocates [2018] KEHC 10262 (KLR)** the Court cited the judicial decision of **Machira and Company Advocates vs Magugu (2002) 2 EA 248 at page 422** where the Court held as follows;

“[As] I understand the practice relating to taxation of bills of costs,

any complaint about any decision of the taxing officer whether it relates to a point of law taken with regard to taxation or to a grievance about the taxation of any item in the bill of costs, is ventilated by way of reference to the judge in accordance with paragraph 11 of the Advocates Remuneration Order. [Emphasis Mine]

102. In the above cited judicial decision, the Court held that any complaint about the decision of a Taxing Officer on taxation is ventilated by way of a reference to a Judge as provided under Paragraph **11** of the Advocates Remuneration Order.

103. It is important to note that under prayer (**g**) of the application under consideration, the Applicant is seeking leave to file a reference out of time. I will address the said prayer under issue (**d**) below.

104. As it stands no reference has been filed before this Court. It is only through a reference that any complaint arising out of

a taxation can be entertained. It is at hearing of the reference that the Court may consider whether or not the Taxing Officer's decision delivered on 12th June, 2024, the resultant Certificate of Costs dated 27th June, 2024 together with all consequential orders should be set aside.

D. Whether the Applicant should be granted leave to file a Reference out of time.

105. The Applicant is seeking leave to file a reference out of time against the decision of the Taxing Officer that was delivered on 12th June, 2024.

106. The Applicant submits that he delayed in filing the said reference because he entered into settlement negotiations with the 1st Respondent.

107. The Applicant also submits that he was not formally served with the Certificate of Costs.

108. The Applicant further submits that soon after the execution process commenced, he moved the Court swiftly.

109. The 1st Respondent on the other hand submits that a period of over one and a half years has lapsed since the Taxing Officer taxed the bill of costs.

110. The 1st Respondent also submits that the application under consideration has been filed after inordinate delay.

111. The 1st Respondent further submits that it is the execution process that has triggered the filing of the application under consideration which would therefore mean that the Applicant had no intention to file a reference.

112. Paragraph 11(4) of the Advocates Remuneration Order provides as follows;

“(4) 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."

113. In the judicial decision of **County Government of Tana River v Miller and Company Advocates [2021] KEHC 5763 (KLR)** the Court held as follows;

"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.(Emphasis mine)

114.The Taxing Officer's decision was delivered on 12th June, 2024. Under **Paragraph 11** of the Advocates Remuneration Order, the Applicant had fourteen days within which to file a reference. The Applicant ought to have filed the reference by 26th June, 2024.

115.In **County Government of Tana River v Miller and Company Advocates (Supra)** the Court further held as follows;

"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. In calculating the length of delay in

making the application for an extension of time the period will start running from 14th day of April, 2021 when the bill of cost was taxed by the taxing master to the 7th day of May, 2021 which time the aggrieved Applicant lodged the chambers summons for extension of time. The delay in filing the application was on or about an overreach of 8 days. In seeking to balance the interest of the respective parties the failure to comply was not inordinate. In addition, the Applicant in his affidavit has explained the reasons which let time to lapse. That hurdle has therefore been satisfied as a sufficient cause for this Court to extend time in favor of the Applicant to file a Reference under paragraph 11 (1) (2) of the Advocates Remuneration Order.” (Emphasis mine)

116.As was held in **County Government of Tana River v Miller and Company Advocates (Supra)**, the length of

the delay and the reasons for non-compliance of the time lines are important factors to take into consideration in the exercise of discretion of the Court in enlarging time.

117. The application under consideration was filed on 9th April, 2025 which was **three hundred days** after the Taxing Officer taxed the bill of costs.

118. The Applicant contends that the delay in filing the reference was occasioned by the negotiations he entered into with the 1st Respondent.

119. It is important to note that the 1st Respondent denies entering into any negotiations. I however note that the Applicant has attached a letter dated 11th November, 2024 to his affidavit in support of the application, that is addressed to and received by Counsel for the 1st Respondent on 12th November, 2024.

120. In the said letter, Counsel for the Applicant states that they are in the process of selling property in Londiani and they request for patience as they work towards repaying the money.

121. The said letter does not mention the sum of Kshs. 2,200,000/=.

122. It is not disputed that the Applicant was aware that the Taxing Officer delivered a ruling on 12th June, 2024.

123. It is evident that the Applicant was amenable to paying the 1st Respondent the said sum of money. As admitted by the Applicant and as submitted by the 1st Respondent, it is the commencement of the execution process that led to the Applicant seeking for leave to file a reference out of time.

124. It is my view that prayer for leave to file a reference out of time is clearly an afterthought and the Applicant's contention that he was not served with the Certificate of Costs within time is inconsequential.

125. The Applicant has always known the amount owed to the Respondent in respect of the party and party costs and has in the past had engagements with the Respondent on payment.

126. It is my view that the Applicant has not given any sufficient reasons for non-compliance with the timelines provided for under **Paragraph 11(a)** and **(b)** of the Advocates Remuneration Order.

127. Further, the Applicant has not given any plausible reasons for the delay of three hundred days in order for this Court to exercise its discretion and extend time within which to file a reference.

128. Consequently, I decline to extend of time to file a reference against the taxing officer's decision delivered on 12th June, 2024.

E. Who should bear costs of the application.

129. It is now settled that costs shall follow the event. This is in accordance with the provisions of **Section 27** of the **Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

130. Taking the foregoing into consideration, the Applicant's application dated 7th April, 2025 succeeds only on one prayer. I hereby order as follows:

- a. The firm of H&K Law is hereby granted leave to come on record for the Applicant.***
- b. The 1st Respondent shall have costs of the application.***

131. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 19TH DAY OF MARCH, 2026.**

**L.A. OMOLLO
JUDGE.**

In the presence of: -

No appearance for the Applicant.

No appearance for the 1st and 2nd Respondents.

Court Assistant; Mr. Joseph Makori.

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