

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELCLMISC E019 OF 2023

LAWRENCE NGINYO KARIUKI {deceased}..... PLAINTIFF

-VERSUS

THE ATTORNEY GENERAL.....1ST DEFENDANT
CAROLYNE GACHERU THURANIRA (sued as the Administrator of the
Estate of the Late FRANCIS MURIUKI THURANIRA)2ND DEFENDANT
MOMANYI BOSIRE.....3RD DEFENDANT
PRISCILLA WANJIRU NJOROGE.....4TH DEFENDANT
KENYA COMMERCIAL BANK LIMITED.....5TH DEFENDANT
SAMUEL ECHACHI SHIKUKU.....6TH DEFENDANT
AFYA COOPERATIVE SACCO LIMITED.....7TH DEFENDANT
KENNEDY IRUNGU MWANGI.....8TH DEFENDANT
KEVIN VICTOR BWIRE MUNANA &
MARGARET MUCHISA BWIRE.....9TH DEFENDANT
RACHEL WAIRIMU NJOROGE.....10TH DEFENDANT
CYPRIAN KANAKE AMBAO.....11TH DEFENDANT
STEPHEN WANG'OMBE KINUTHIA.....12TH DEFENDANT
PATRICK KIBE KAMAU &
GEORGE MUCHIRI KAMAU.....13TH DEFENDANT
SOPHY NDELA KAMATA.....14TH DEFENDANT
RISPER KERUBO NYAMETE.....15TH DEFENDANT
PETER KINUTHIA GITURA.....16TH DEFENDANT
WINNIE WANJIRU KARIUKI.....17TH DEFENDANT
EDWARDELVIS NDIRANGU &

ESTHER WANGARI NDIRANGU.....18TH DEFENDANT
DEBORAH OWIRA OTIENO.....19TH DEFENDANT
PAUL JAMES OTIENO ODHIAMBO.....20TH DEFENDANT
BARCLAYS BANK OF KENYA LIMITED.....21ST DEFENDANT
JOHN MUCHANGI KARIGI.....22ND DEFENDANT

-AND

MAXIMINUS EKADA MAASE.....1ST INTERESTED PARTY
STEPHANIA ACHOM.....2ND INTERESTED PARTY
HESKETH K. MBOTHU.....3RD INTERESTED PARTY
KOIYAKE OLE SAKUDA.....4TH INTERESTED PARTY

-AND

NGINYO INVESTMENTS LIMITED.....1ST OBJECTOR
PEMA HOLDINGS LIMITED.....2ND OBJECTOR
CHARITY ROSE KENDI KIRAGU.....3RD OBJECTOR
MARGARET WANGARI NGINYO.....4TH OBJECTOR

RULING

*(In respect of the Applicants' Motion dated 19th September, 2025 & Interested Party's
Notice of Preliminary Objection dated 23rd September, 2025)*

Introduction

1. The genesis of these proceedings is traceable to the late **Lawrence Nginyo Kariuki's** law suit, Machakos High Court ELC No. 101 of 2010, instituted on 19th May, 2010 at Machakos High Court against the Defendants before its subsequent transfer to this court as Kajiado High Court ELC 690 of 2017. Following the demise of **Lawrence Nginyo Kariuki**, the Interested Parties filed a Notice of Motion dated 5th August, 2021 seeking to have the suit declared as abated, costs of defending the suit and that the said costs be recovered from the estate of the late **Lawrence Nginyo Kariuki**.

2. The Motion dated 5th August, 2021 was premised on the grounds that following the death of the Plaintiff, Lawrence Nginyo Kariuki, on 24th January, 2020, no legal representative had been appointed to substitute the Plaintiff yet the matter had been pending in court for 12 years. Upon considering the application, **M.N. Gicheru J** allowed the application in its entirety through a Ruling delivered on 16th December, 2021.
3. Subsequently, the 1st and 4th Interested Parties filed a **Party and Party Bills of Costs** dated 15th June, 2023 on 23rd June, 2023 vide this miscellaneous application seeking a total sum of Kshs.4,239,755/=. After considering the Bills of costs, the Taxing Master, Hon. Jane Kamau taxed the bill at **Kshs.2,929,912/=** vide a ruling delivered on 13th March, 2024. On the issue of Lawrence Nginyo Kariuki representation during the taxation proceedings as well as service of the Bills of Costs, the Taxing Master noted as follows in paragraph 2 of her ruling:

"Interestingly, the Respondent passed away and he had been represented in Court by Mr Gachuna's law firm. He unfortunately passed on 3 years ago and the Estate has not appointed an Administrator since. This was the sole reason that Mr. Gachuna, who has not ceased from acting, alleged that the bill could not be served upon any party and therefore the Taxation of the bill should be stayed awaiting the appointment."

4. Mwaniki & Gitau Company Advocates acting for the Interested Parties sought to **enforce** the awarded costs. Warrants of attachment were issued to Immediate Auctioneers to sell by public auction the judgment debtor's

properties. Nonetheless, the warrants were **objected** to through an application dated 19th August, 2025. The objectors alleged that as the named heirs of the deceased and executors of his estate, they were **never served** with the Bill of Costs neither did they **participate** in the proceedings of its taxation.

5. The court record indicate that the firm of Oraro & Company Advocates firstly came on record for the first time in this suit on 22nd September, 2025 after filing a Notice of Motion dated 19th September, 2025 seeking for the following four substantive orders. Namely;

(a) That the Plaintiff herein Lawrence Nginyo Kariuki (now deceased) be substituted with Margaret Wangari Nginyo, Silas Macharia Kariuki, Jane Wambui Kiragu and Scholastica Njeri Kariuki, the legal representatives of the deceased.

(b) That there be a stay of execution of the Ruling on Taxation delivered on 13th March, 2024 pending the hearing and determination of this application.

(c) That upon grant of prayer 1 above, the Plaintiff/Applicant be granted leave to file a Reference out of time with respect to the Ruling on Taxation delivered on 13th March, 2024.

(d) That the costs of this Application be in the cause.

6. The Motion which is premised on the grounds on the face of it is supported by the Affidavit of **Jane Alice Wambui Kiragu** sworn on 19th September, 2025 on her own behalf and on behalf of other executors consisting of

Margaret Wangari Nginyo, Jane Wambui Kiragu, Scholastica Njeri Kariuki and Silas Macharia Kariuki.

7. The Deponent asserts that she is the eldest child of the late Lawrence Nginyo Kariuki and amongst the **listed executors** of his will dated **13th June, 2014**. Following the demise of their father, the executors petitioned for grant of probate of the deceased's will through a **Petition dated 5th June, 2020** before the High Court. Despite extended protracted litigation objecting to their application for grant of probate, the Court of Appeal through its judgment delivered on 8th November, 2024 held that the deceased's will took effect from the date of his death.
8. The deponent alleged that while discharging her duties as an executor, she became aware that Lawrence Nginyo Kariuki's suit in *Kajiado High Court ELC No. 690 of 2017*, instituted against the Defendants challenging fraudulent surveying works, subdivisions and dealings in NGONG/NGONG/1949 and 1950, their eventual transfer and issuance of title deeds was pending as at the time he passed away. The executors only learnt of this matter on 12th August, 2025 when the 1st and 2nd Interested Parties attempted to **execute** taxed costs by **proclaiming** and **attaching** the assets of the deceased.
9. The taxed costs were awarded through a ruling made on 13th March, 2024 taxing the Interested Parties' Bill of Costs dated 15th June, 2023 at **Kshs. 2,928,912.00/=**. The Bill of costs was premised on a Ruling delivered on 16th December, 2021 which declared the deceased's suit as abated with costs to the Interested Parties. It is contended that despite the glaring irregularity

of **lack of service** of the Bill of costs upon any of the deceased estate's executors, the Taxing Master proceeded to tax the Bill after which the Interested Parties proceeded to execute the resultant decree. Additionally, the Interested Parties sought to **garnishee** the deceased's accounts in various banks according to their application dated 15th September, 2025.

10. Premised on the foregoing, the court is implored to issue the orders sought in order to protect and preserve the deceased's estate failure to which it shall be under jeopardy and immediate threats of execution yet the Interested Parties' execution proceedings and Garnishee application are objected to. It is contended that the deceased's counsel on record never brought to the **attention** of the executors the fact that the suit had been marked as abated and costs awarded against the estate.

11. On 23rd September, 2023, *prayers (a) and (b)* in the application under consideration were *allowed* and the decree-holders directed to file their responses to the application dated 19th September, 2025. When the matter came up for directions on 23rd September, 2025, **Ms. Njuguna** holding brief for **Mr. Mwaniki** for the Interested Parties/Decree holders informed court that they had filed a preliminary objection concerning the coming into record of new counsel for the estate of Lawrence Nginyo Kariuki without the consent of the previous counsel on record. According to the Notice of Preliminary objection dated 23rd September, 2025, *the Notice of Motion dated 19th September, 2025 ought to be dismissed ex debito justitiae for having violated Order 9 Rule 9(a) and (b) of the Civil Procedure Rules, with*

costs to the decree-holders. In essence the gist of the objection was that change of advocates was not effected in accordance with the law.

12. The Interested Parties further objected to the Further Affidavit sworn on 7th October, 2025 by Jane Alice Wambui Kiragu, for the reason that the deponent had not exhibited any written authority authorizing her to swear the affidavit on behalf of the five executors.

13. According to the Interested Parties counsel's submissions, advocates' instructions do not terminate upon the death of the client. It is asserted that valid execution orders cannot therefore be scuttled because the administrators had not been appointed as at the time the order of abatement was made.

14. It is further alleged that stay of execution will occasion the decree holders extreme prejudice, costs and inconvenience. Additionally, it will rekindle litigation, undermine just determination of proceedings and prolong litigation indefinitely.

15. The Interested Parties further opposed the application through grounds of opposition dated 8th October, 2025 premised on the following grounds;

- i. The Application is bad in Law, incompetent and untenable for violating Section 82 (a) of the Law of Succession Act Cap 160 and Section 25(3) of the Public Trustee Act Cap 168 Laws of Kenya by not involving all executors in the Will.*
- ii. The change of Advocates violates section 9 rule 6 of the Civil Procedure Rules Cap 21 Laws of Kenya.*

- iii. *Stay of Execution runs Counter to the Provision of Order 11 of the Advocates Remuneration order. 4. The applicants are Guilty of Laches with no plausible explanation for the lull of close to 5 years.*
- iv. *The documents with a Thumb prints made by Margaret Wangari Nginyo and identified as the Company Resolution of Nginyo Investments Limited, Company Resolution of Pema Holdings Limited and Authority to Depone and Testify dated 15th August 2025 are not accompanied with a Certificate of Illiteracy.*

Courts directions

16. The application and the preliminary objection were canvassed through written submissions. All parties duly filed their submissions. The court has had occasion to read and consider submissions in the course of this ruling.

Issues for determination

17. Upon careful analysis, the issues for determination that arise are as follows;
- a. *Whether the Notice of Preliminary Objection dated 23rd September, 2025 is merited.*
 - b. *Whether time should be extended to allow the Plaintiff file Reference out of time against the Taxing Master's ruling made on on 13th March, 2024.*
 - c. *Whether the Taxing master's Ruling delivered on 13th March, 2024 ought to be stayed pending the intended refence against the decisions.*

Determination

A. Whether the Notice of Preliminary Objection dated 23rd September, 2025 is merited.

18. The interested Parties' preliminary objection seeking for dismissal of the Applicants' application is premised on the allegation that change of advocates was not effected in accordance with order 9 Rule 9 of the Civil procedure Rules which stipulates 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.’

19. The Interested Parties argue that the law firm of Oraro & Company Advocates which filed the instant application is not properly on record before this court neither can it address the court because change of advocates from the outgoing advocates to the new advocates has not been effected in accordance with the foregoing provisions. They assert that Stanley Henry & Company Advocates have been and still are the advocates on record for the Plaintiff.

20. It is not contested that the late Lawrence Nginyo Kariuki passed away during the pendency of his law suit instituted against the Defendants and Interested Parties. Following his death, the Interested Parties instituted taxation proceedings against the late Lawrence Nginyo Kariuki despite the fact that the Court through its Ruling delivered on 16th December, 2021 had allowed their application to have the deceased's suit declared as abated and awarded them costs which were to be borne by the legal representatives of his estate. The court record reveals that Mr. Gachuna appeared and participated in the taxation proceedings on behalf of the deceased. It is noteworthy that he informed the Taxing Master that he had not been issued with any instructions by the administrators of the estate of the deceased in regard to the proceedings.

21. As rightfully submitted by the Applicants, the advocate-client relationship terminates following the death of either the client or the advocate. Accordingly, an advocate cannot continue to purportedly act unless and until such relationship is renewed by the deceased client's legal representatives if they so wish. Bearing in mind that Stanley Henry & Company Advocates did not have the requisite authority to participate in the taxation proceedings on behalf of the executors/administrators of the late Lawrence Nginyo Kariuki, Order 9 Rule 9 of the Civil Procedure Rules does not apply in this case. The preliminary objection by the Interested Parties is therefore not merited.

22. Further, and without prejudice to the above finding, non-compliance with Order 9 rule 9 does not oust the jurisdiction of the court as was rightly

held by the court of Appeal in Tobias M. Wafubwa v Ben Butali [2017] KECA 142 (KLR). The court further emphasized that the concern of the court ought to be doing substantive justice over procedural technicalities. The court stated that;

“We would go further to add that, provided that where the failure to comply with the rule 9 did not undermine the jurisdiction of the court, or affect the core of the dispute in question, or prejudice either of the parties in any way as to lead to a miscarriage of justice, then, Article 159 of the Constitution and the overriding principles could be called upon to aid the court to dispense substantive justice through just, efficient and timely disposal of proceedings.”

B. Whether time should be extended to allow the Plaintiff file a Reference out of time against the Taxing Master’s ruling delivered on 13th March, 2024

23. It is not contested that as at the time the late Lawrence Nginyo Kariuki died on 24th February, 2020, he had a valid will which named the executors and trustees of his estate as Margaret Wangari Nginyo Kariuki (**Wife**), Jane Alice Wambui Kiragu(**daughter**), James Anthony Kariuki (**son**), Scholastica Njeri Kariuki(**daughter**) and Sila Macharia Kariuki(**son**). As at the time of his death, his law suit instituted and initiated against the Defendants and the Interested Parties had not yet been concluded. Following the abatement of the suit, the Interested Parties sought for a declaration to that effect with costs. The trial court proceeded to declare the suit abated and further

awarded costs of defending the suit to the 1st, 2nd, 3rd and 4th Interested Parties.

24. The Interested Parties pursued the awarded costs by instituting taxation proceedings by way of this Miscellaneous application personally against Lawrence Nginyo Kariuki through a Party and Party Bills of Costs dated 15th June, 2023 which was subsequently taxed at **Kshs.2,929,912/=**. The Applicants are aggrieved by the said decision because, as they put it, it was arrived at despite apparent evidence that the Bill of Costs was not served upon them.

25. The guiding principles which bind courts when exercising their judicial discretion to extend time were elaborated by the Supreme Court in *Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)*, as follows;

“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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election

petitions, public interest should be a consideration for extending time.”

26. The above principles were further restated by the Court of Appeal in its decision in *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees [2020] KECA 761 (KLR)* in the following pronouncement;

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”

27. The Applicants assert that what caused the delay was prolonged litigation which was finalized when the Court of Appeal rendered its decision on 8th November, 2024 in *Civil Appeal No. E471 of 2021*. Subsequently, they swiftly approached this court seeking stay of execution of taxation of the Taxing Master’s decision after they learnt about it during an attempted proclamation of the deceased estate’s properties in quest of settlement of the decretal sum.

28. Article 50(1) of the Constitution entitles every person the right to fair hearing. Additionally Article 50 (c) lists the right to a fair trial amongst fundamental rights and freedoms which cannot be derogated. Through a concurring opinion, in *Kidero & 4 others v Waititu & 4 others [2014] KESC 11 (KLR)*, the concept of fair hearing was defined as follows by Lady Justice Njoki Ndungu, SCJ;

Fair hearing, in principle incorporates the rules of natural justice, which includes the concept of audi alteram partem (hear the other side or no one is to be condemned unheard) and nemo judex in causa sua (no man shall judge his own case) otherwise referred to as the rule against bias. Peter Kaluma, Judicial Review: Law, Procedure and Practice 2nd Edition (Nairobi: 2009) at page 195, notes that the rules of natural justice generally refer to procedural fairness in decision making. Further he analyses the two mentioned concepts of the rules of natural justice and states [at pages 176 and 177] that it is the duty of the courts, when dealing with individual cases, to determine whether indeed the rules of natural justice have been violated and noting that “although the necessity of hearing is well established, its scope and contents remain unsettled.”

29. It is evidently clear that the Taxation proceedings initiated personally against the late Lawrence Nginyo Kariuki were conducted in the absence of and without the knowledge of his executors. In the interest of justice, and in the furtherance of the overriding objective of this court of facilitating the just, expeditious, proportionate and affordable resolution of the civil

disputes, it is fair and just that the Applicants be granted an opportunity to file their reference against the decision of the Taxing Master out of time.

30. Having extended time to file a reference out of time, execution of the decision of the Taxing Master delivered on 13th March, 2024 is accordingly stayed to await the outcome of the reference.

Disposition

31. In conclusion, the court hereby proceeds to issue the following orders;

(a) The Notice of Preliminary Objection dated 23rd September, 2025 is hereby dismissed.

(b) The Applicants are granted leave to file their objection to the taxation and reference against the decision of Taxing Master delivered on 13th March, 2024 in the next 14 days from the date of this ruling.

(c) The costs of the application and the preliminary objection shall be in the cause.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 3rd Day of March 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Ms. Kadima for the Applicants

Ms. Njuguna h/b for Mr. Mwaniki for the Interested Parties

Mr. Angelo Makuei for the Objectors

Court Assistant: Mpoye

M.D. MWANGI
JUDGE

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