



REPUBLIC OF KENYA



KENYA LAW
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**Kashaa v Tonkei (Environment and Land Case 44 of 2020)
[2026] KEELC 2625 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2625 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 44 OF 2020**

**J OMANGE, J
APRIL 30, 2026**

BETWEEN

NTIPAPA OLE KASHAA PLAINTIFF

AND

OLOIBOR OLE TONKEI DEFENDANT

RULING

1. Before the Court for determination is the Application dated 5th January 2026 by the Defendant/ Applicant.
2. The Application seeks that:
 - i. This Honourable Court grant leave to Sakimpa & Partners Advocates to come on record for the Applicant in place of the previous advocates, this being a matter arising post-judgment.
 - ii. There be a stay of enforcement of the Ruling on taxation and the Certificate of Taxation pending the hearing and determination of this application.
 - iii. The Honourable Court be pleased to enlarge time and grant leave to the Defendant/ Applicant to file a Reference out of time against the Ruling of the Taxing Officer delivered on 20th November 2025.
3. This Application is premised on the grounds set out in the Application and in the Supporting Affidavit. The Applicant seeks leave to file a Reference out of time against the ruling of the Taxing Officer delivered on 20th November 2025, which taxed the Party and Party Bill of Costs at Kshs. 751,127. He expresses dissatisfaction with the said taxation and contends that he is entitled to challenge it under Paragraph 11 of the Advocates (Remuneration) Order.
4. The Applicant avers that he failed to comply with the prescribed timelines for filing a Notice of Objection and Reference due to ill health which rendered him incapable of managing his affairs or



- issuing instructions to counsel within the statutory period, and that the delay was neither deliberate nor intended to obstruct justice. A medical report was annexed to support this assertion.
5. The Applicant further states that upon recovery, he acted promptly by instructing his current advocates to regularise the position. He maintains that the intended Reference raises arguable issues, particularly on the exercise of discretion by the Taxing Officer in awarding instruction fees. He claims that unless leave is granted, he will suffer prejudice by being denied the opportunity to challenge the taxation.
 6. The Plaintiff/ Respondent opposes the application arguing that the application is an abuse of the Court process as the Applicant has failed to comply with the mandatory provisions of Paragraph 11(1) of the Advocates (Remuneration) Order, having failed to file a Notice of Objection within the prescribed fourteen (14) days and having failed to seek leave to file the same out of time.
 7. The Respondent further challenges the Applicant's explanation for delay, namely ill health, arguing that the annexed medical report is inadequate and does not demonstrate incapacity during the critical statutory period. It is averred that the report was prepared long after the taxation ruling, lacks supporting treatment records and does not establish that the Applicant was unable to issue instructions. The claim of incapacity is said to be inconsistent with the Applicant's ability to instruct counsel, swear affidavits, and prosecute the present application.
 8. The Respondent contends that the Applicant, having been represented and aware of the taxation proceedings, failed to participate and thereby waived the right to challenge the Bill, rendering the present application an afterthought aimed at delaying settlement of costs. It is further asserted that the intended Reference does not identify contested items, and has failed to demonstrate any error of principle. The Respondent maintains that granting the application would cause prejudice and undermine the procedural framework on taxation and thus urges its dismissal with costs.
 9. This application was canvassed by way of written submissions. The Applicant attributes the 32 day delay to medically documented illness that rendered him incapable of instructing counsel during the critical period. Upon recovery, the Application was filed promptly. He cites the case of *Nicholas Kiptoo Arap Korir Salat v IEBC* [2014] eKLR that extension of time is a discretionary equitable remedy and on *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] that a plausible and satisfactory explanation, not the length of delay, is the decisive consideration.
 10. Counsel submits that while the Taxing Officer had discretion to determine the fees where value is unascertainable, that discretion must be exercised in a structured and transparent manner. Counsel argues that the Taxing Officer committed an error of principle in assessing instruction fees at Kshs. 500,000 with consequential getting-up fees of Kshs. 166,667.
 11. While relying on *Labh Singh Harman Singh Ltd v Attorney General* [2016] eKLR and *County Government of Tana River v Miller and Company Advocates* [2021] eKLR, Counsel submits that enforcement of the Certificate of Taxation pending determination of the Reference would risk rendering the Reference nugatory, cause the Applicant irreparable financial prejudice through possible asset attachment and would upset the balance of convenience which favours preservation of the status quo. It is also submitted that no prejudice would be caused if the Court granted leave for the new advocates to come on record with reliance on *Kabiru v Amboso* [2024] eKLR and *Archer v Archer* [2024] eKLR.
 12. In opposing the application, counsel for the Plaintiff submits that an objection notice had not been filed as required by Rule 11(1) of the Advocates (Remuneration) Order. Counsel cites the case of *Machira & Co. Advocates v Magugu* [2002] eKLR, which held that the discretion under Rule 11(4)



to enlarge time should not disregard procedure. Counsel further submitted that the Applicant's claim of ill health was unsupported by credible medical evidence demonstrating the duration of incapacity, how the illness prevented instructions from being given or why alternative arrangements could not have been made, particularly considering that the Applicant was at all times represented by counsel. Finally, that the reference had not disclosed reasonable cause for setting aside the taxation and should thus be dismissed with costs.

13. Having considered the application, submissions, relevant authorities and statutes the court distils the following issues for determination;
 - i. Whether the Applicant is entitled to enlargement of time to file the Reference out of time;
 - ii. Whether the Applicant has met the threshold for grant of stay of execution of the Ruling issued on 20th November 2025;
 - iii. Who should bear the costs of this application?
14. Paragraph 11 of the Advocates (Remuneration) Order outlines the procedure for challenging a taxation. It provides that a Notice of Objection should be filed within fourteen (14) days, while Paragraph 11(4) gives the Court discretion to enlarge time for filing a reference.
15. In the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR). The Court emphasized that extension of time is not a right but an equitable remedy to be granted at the Court's discretion upon consideration of factors such as the length of delay, the reason for the delay, the degree of prejudice to the respondent and whether the application has been brought without undue delay.
16. The taxation Ruling was delivered on 20th November 2025 and the application for enlargement of time filed on 5th January 2026. The Applicant/Defendant attributes the delay to his ill health, an argument the Plaintiff/ Applicant contests.
17. The medical report confirms that the Applicant suffers from dementia, thereby impairing his ability to make decisions and manage his affairs. While the Respondent challenges the sufficiency and credibility of the medical report he has not produced cogent evidence to rebut its contents or authenticity. In the absence of such rebuttal, the court is inclined to exercise its discretion in favour of the Plaintiff.
18. The principles for stay of execution were well laid out in *Butt v Rent Restriction Tribunal* [1979] eKLR where the Court held that the power to grant stay is discretionary and should be exercised in such a manner as not to render an appeal nugatory.
19. The court is therefore minded to grant an order to maintain the status quo pending the filing and determination of the reference. In balancing the rights of the Plaintiff to enjoy the fruits of his Judgement against the Defendants right to pursue the Reference, the court orders as follows;
 - i. Leave is granted to Sakimpa & Partners Advocates to come on record for the Applicant/ Defendant.
 - ii. Leave is hereby granted to file and serve a notice of objection within 14 days of uploading of Ruling on the E filing system
 - iii. The Taxing Officer shall provide reasons for the Taxation within 14 days of receipt of objection unless such reasons are contained in the Ruling, in which case the Taxing Master shall indicate as much.



- iv. Leave is hereby granted to the Applicant to file and serve a Reference against the Ruling of the Taxing Officer delivered on 20th November 2025.
- v. The status quo existing as at 30th April 2026 is to be maintained pending the hearing and determination of the intended Reference.
- vi. The Plaintiff shall have the costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF APRIL 2026.

JUDY OMANGE

JUDGE

In the presence of:

Mr. Sakimpa for the Defendant/Applicant.

Mr. Nairi for the Plaintiff/Respondent.

Peter – Court Assistant.

