



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT KAJIADO

ELC CASE NO. 499 OF 2017

NICKSON MUCHERU MASIODO

APPLICANT

VERSUS

ROSE NASIEKU SELEI

RESPONDENT

RULING

1. The Application dated 28th July 2025 is brought under Section 1A, 1B and 3A of the Civil Procedure Act; Order 9, Order 22 Rule 22, Order 51 Rule 1 of the Civil Procedure

Rules; Rule 11(1) and (2) of the Advocates Remuneration Order and all other enabling provisions of the law. The Application seeks: stay of execution of the Deputy Registrar's Ruling dated 9th May 2025 in which the Party and Party Bill of Costs was taxed at Kshs. 455,965; and leave to file a Notice of Objection and Reference against the said Ruling out of time.

2. This Application is premised on the grounds set out in the Application and the Supporting Affidavit. The Applicant avers that he learnt of the Taxation Ruling on 19th May 2025 and instructed his then Advocates to file an objection. He was only made aware that no such objection had been filed upon receiving a proclamation notice from Icon Auctioneers. He attributed the delay to his Advocate's error and his own financial constraints as a casual labourer in instructing another Advocate.

3. The Respondent contested the application on grounds that the Applicant and his Advocates were aware and participated in the Party and Party Bill of Costs proceedings and once the Ruling was delivered on 9th May

2025, the same was served upon the Applicant's counsel. The Decree remaining unsettled, she engaged auctioneers and sought a warrant to attach and sell the Applicant's immovable plots A65 and B102 Ewaso Kedong Shopping Centre. It was the Respondent's claim that the Applicant was only prolonging the settlement of the Decree by instituting numerous applications and the same should be dismissed.

4. The Applicant submitted that upon receipt of the Deputy Registrar's Ruling, his then Advocate failed to file an objection within the 14 day period stipulated under **Paragraph 11(1) and (2) of the Advocates Remuneration Order** due to his Advocate's error, and that being a man of meagre means he took time in instructing another Advocate. In support of the prayer for extension of time, the Applicant relied on **Order 50 Rule 6 of the Civil Procedure Rules**, which vests in this Court a discretion to enlarge time where the interests of justice so demand.

5. The Applicant also submitted that his Reference was meritorious because the Taxing Master erred in taxing instruction fees at Kshs. 300,000. This is because there were no supporting documents from the Respondent establishing the value of the suit property, and consideration was not given to the fact that part of the matter was conducted by the Respondent in person without an advocate on record.
6. While relying on **Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)**, the Respondent opposed the enlargement of time arguing that extension was not a right but a Court's discretion. The Respondent contested the claim that the Applicant was not aware that the objection was not filed blaming the error on his then Advocate. While citing **Bi-Mach Engineers Ltd v James Kahoro Mwangi [2011] eKLR**, the Respondent argued that a litigant bears responsibility for the conduct of his case and cannot cast blame on counsel for procedural lapses. It was further submitted that a reference to this Court ought to be an

error in principle or where the amount was so manifestly excessive or low, and this had not been evidenced in this reference. See **Premchand Raichand Ltd & Another v Quarry Services of East Africa Ltd [1972] EA 162.**

Therefore, the Applicant's complaint that the Taxing Master ought to have exercised discretion differently on instruction fees did not, in law, constitute a valid ground for reference. As such, the application should be dismissed with costs.

7. I have considered the application, rival submissions, relevant authorities and statutes and distil 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 9th May 2025;

iii. Who should bear the costs of this application?

8. The Applicant failed to file a Notice of Objection within the fourteen (14) day period stipulated under **Rule 11(1) of the Advocates (Remuneration) Order**, which provides: ***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...***
9. It is on record that the Ruling was delivered on 9th May 2025 and the Applicant averred that he received a copy on 19th May 2025 and instructed his advocates to file an objection, which they did not. The Applicant therefore approaches this Court not as of right but purely at the mercy of its discretion, seeking indulgence to regularize a clear procedural default.
10. The principles that guide the exercise of discretion in applications for extension of time are well settled. In the celebrated decision of **Salat v Independent Electoral and Boundaries Commission & 7 others** **[2014] KESC 12 (KLR)** the Supreme Court held: “...

Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it....

11. The Applicant's principal explanation for the delay is twofold: first, financial constraints arising from his status as a casual labourer; and second, the failure of his then Advocates to file the Notice of Objection despite being instructed to do so.. The Applicant having been served with the Ruling on 19th May 2025, acknowledges he had ample time to file the notice of objection but admits he had financial constraints which hindered his instructions on filing of the reference. Immediately he obtained funds he instructed a lawyer who was then able to confirm that the notice of objection had not been filed. I find that there

are sufficient grounds to enable this court exercise discretion to allow filing of the notice of objection.

12. The Applicant also seeks stay of execution of the Ruling of the Deputy Registrar dated 9th May 2025 pending the hearing and determination of the Reference. The principles that guide the Court in applications for stay of execution pending appeal are well settled. Order 42 rule 6(2) of the **Civil Procedure Rules** provides as follows:

No order for stay of execution shall be made under subrule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

13. These principles were summarized in **Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nai. 15 of 1990 [1990] KLR 365,** wherein the Court of Appeal held that whereas the Court of Appeal's power to grant stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 42 rule 6 of the ***Civil Procedure Rules*** is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay.
14. The powers to grant or refuse an application for stay of execution pending appeal is discretionary in that the Court when granting stay has to balance the interests of the Appellant with those of the Respondent as highlighted in the case of **M/s portreitz maternity -vs- James Karanga Kabia civil appeal no. 63 of 1997**
15. Balancing the interest of both the Applicant and the Respondent I will allow the application so as to give the Applicant a chance to prosecute the reference. However the Applicant should strictly comply with the timelines

given by the court so as to minimize prejudice to the Respondent/ Decree Holder.

16. Accordingly, the Application dated 28th July 2025 is allowed as follows;

- a. Extension of time to file the Notice of Objection and Reference is granted. The Notice of Objection should be filed within 21 days from today
- b. Stay of execution is granted subject to deposit of a sum of Kshs 150,000 in court within 21 days
- c. In default of compliance the Respondent shall be at liberty to execute
- d. Each party shall bear their own costs of the Application.

Dated, Signed and Delivered virtually at Kajiado this 16th day of April 2026.

JUDY OMANGE

JUDGE

IN THE PRESENCE OF:

Ms.Ochola for Ms. Mongare for the Respondent.

Peter - Court Assistant.

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