

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
MISC. CIVIL APPLICATION NO. E282 OF 2023

BETWEEN

ANGELA MULWA T/A

MULWA & PARTNERS ADVOCATES.....
.....ADVOCATE

AND

MARTIN LEMAIYAN MOKOOSIO.....
.....RESPONDENT

RULING

Introduction and Background

1. On 22nd September 2025, the court's Deputy Registrar taxed the Respondent's Party and Party Bill of Costs at Kshs. 203, 952.00. By her Notice of Motion dated 4th November 2025, the Applicant now seeks leave of the court to object to this decision out of time. She supports the application through her affidavit sworn on 4th November 2025 and it is opposed by the Respondent through the Grounds of Opposition dated 20th November 2025. The parties have canvassed the application by way of written submissions that I

have considered together with the pleadings and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

2. The court is being asked to determine whether the Applicant should be granted more time to file her reference and challenge the Deputy Registrar's decision. It is not in doubt that under **Para. 11(4)** of the **Advocates Remuneration Order** ("the **Order**") the court has the discretion to enlarge time to file a reference as follows:

11(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.

3. The Supreme Court, in **County Executive of Kisumu v County Government of Kisumu & 8 others [2017] KESC 16 (KLR)** held that in an application for extension of time, the whole period

of delay should be declared and explained satisfactorily to the Court. It reiterated the principles it had earlier delineated in ***Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission, Wilfred Rotich Lesan, Robert Siolei County Returning Officer Bomet County, Kennedy Ochayo, Wilfred Wainaina, Patrick Wanyama, Mark Manzo & Abdikadir Sheikh [2014] KESC 12 (KLR)*** that a court, in its determination of such an application is guided by the following factors:

- 1. 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;*
- 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;*
- 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;*
- 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*
- 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;*

6. Whether the application has been brought without undue delay; and

7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

4. The Applicant has stated that she failed to object within the required 14 days due to the negligence and/or mistake of her previous advocates and that this mistake should not be held against her. That she has now appointed a new firm of advocates to take over the case and file the objection and the present application has been filed without undue delay. Whereas the Applicant states that her former advocates focused on the prosecution of her application filed in the Court of Appeal and forgot to bring a Reference before the court, she provides no dates, no correspondence, no diary entries, and no sworn statement from the former advocate confirming this alleged forgetfulness. There is also no explanation of when the appeal was filed and how the appeal prevented filing a simple Reference. Further, I am in agreement with the Respondent that the Applicant has not demonstrated any effort and/or due diligence on her part to ensure that the Reference was filed within time or soon after the period for filing had expired (see **Waruhiu v Munene & another [2021] KESC 42 (KLR)**)

5. I am in further agreement that it is the duty of a client to follow up on their cases with their advocates and it is not enough for a party to simply blame the advocates on record for all manner of transgressions (see **Rajesh Rughani v Fifty Investments Limited & another [2016] KECA 829 (KLR)**). I also refuse to believe that the Applicant, who is an experienced advocate together with her former advocates, who are also equally experienced, can simply “forget” to file a Reference in time. Filing a Reference under **Para. 11** of the **Order** is a basic, routine practice and it is not that complex for a party to simply forget to file. In my view, a mistake of this nature from experienced advocates is difficult to pardon and I also find that inaction or simply forgetting a legal duty is not excusable, especially where a rule is clear. Ignorance of the law or failure to read a rule does not amount to a genuine mistake.
6. I also find that extending time to file a Reference will be prejudicial to the Respondent as it has not been denied that he has already begun execution and an auctioneer has undertaken proclamation of assets. The Applicant has delayed proceedings since 2023, moving from court to court and granting an extension would further delay the Respondent’s legitimate right

to enjoy the fruits of the taxed costs. The Respondent should not be unduly prejudiced by a delay that is entirely the fault of the Applicant and her former advocate.

7. In the end, I find that the explanation that the Applicant's advocates forgot because they were focused on an appeal is vague, uncorroborated, and does not meet the standard required for an experienced litigant. The legal principle that a client should not suffer for an advocate's mistake is not absolute and applies only where the mistake is genuine, excusable, and not part of a pattern of inaction or ignorance. In this case, the mistake is neither genuine nor excusable given the Applicant's own professional status, the clarity of the **Order**, and the lack of any evidence of due diligence.

Conclusion and Disposition

8. I find no merit in the Applicant's application dated 4th November 2025 and the same is dismissed with costs to the Respondent assessed at Kshs. 20,000.00.

DATED SIGNED AND DELIVERED virtually at NAIROBI this

8th DAY of MAY 2026

.....
J.W.W. MONGARE

JUDGE

IN THE PRESENCE OF

1. N/A for the Applicant
2. Mr. Obwaka for the Respondent
3. Amos- Court Assistant

ORIGINAL