



**Rege v Achola & 2 others (Environment and Land Miscellaneous Application
E012 of 2023) [2025] KEELC 5580 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5580 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E012 OF 2023
SO OKONG'O, J
JULY 24, 2025**

BETWEEN

JAMES GORDON REGE APPLICANT

AND

JOSEPH ODERO ACHOLA 1ST RESPONDENT

MOSES ODERO ACHOLA 2ND RESPONDENT

DANIEL ODHIAMBO ACHOLA 3RD RESPONDENT

RULING

1. The Applicant brought this miscellaneous application by way of Chamber Summons dated 29th May 2023, filed on 31st May 2023. The application was brought as a reference against the taxation of the Respondents' party and party bill of costs by Hon. K. Cheruiyot SPM, on 7th December 2022, in Kisumu ELCC No. 186 of 2018.
2. What is before me is the Applicant's application brought by way of an Originating Summons dated 24th July 2024 seeking leave to file a reference out of time. The Application was based on several grounds. The Applicant averred that he had a valid claim against the Respondents. The Applicant averred that he stood to suffer irreparable loss and damage if the application was not allowed and that the Respondents would not be prejudiced if this application was allowed.
3. The Applicant averred that the costs awarded to the Respondents by the taxing officer were exorbitant. The Applicant averred that he was seeking leave of the court to have his reference against the said taxation dated 29th May 2023 deemed as properly filed within time. The Applicant averred that the taxing officer never considered his submissions on the taxation. The Applicant averred that the firm of S.J. Nyang & Company Advocates, which acted for the Applicant in the taxation, did not communicate the outcome of the primary suit and the subsequent taxation on time. The Applicant averred that the reference was filed without unreasonable delay. The Applicant averred that his previous



advocates informed him to look for another advocate to act for him in the matter, as a result of which the current law firm of advocates was appointed by the Applicant.

4. The Originating Summons was supported by the affidavit of the Applicant's advocate, Annette Ondoro Atieno (the advocate) sworn on 24th July 2024. The advocate averred that the Respondents filed a party and party bill of costs dated 23rd June 2022, drawn in the sum of Kshs. 699,145/- for taxation against the Applicant. The advocate averred that the said bill of costs was in respect of the costs awarded to the Respondents in Kisumu ELC No. 186 of 2018 formerly Kisii ELC No. 40 of 2016.
5. The advocate averred that the said bill of costs was taxed by the taxing officer, Hon K. Cheruiyot SPM on 7th December 2022 at Kshs.699,345/-. The advocate averred that the taxing officer increased the costs sought by the Respondents from Kshs.699,145/- to Kshs.699,345/- without reasonable justification for the said increase. The advocate averred further that the taxing officer increased instruction fees from Kshs. 90,000/- to Kshs.285,000/- contrary to Paragraph 1(B) Schedule 6 of the [Advocates Remuneration Order 2014](#), without due regard to the fact that the matter was the same case which was merely transferred from Kisii ELC to Kisumu ELC. The advocate averred that the taxing officer also increased getting-up fees and attendance fees without reasonable justification for the increase. The advocate averred that the Applicant was aggrieved by the taxing officer's decision on items 1, 2, 3, 5, 6 and 9 of the Respondents' bill of costs dated 23rd June 2022.
6. The Respondents opposed the application through the grounds of opposition dated 29th July 2024. The Respondents averred that the application was incompetent, frivolous and vexatious. The Respondent averred further that the application was brought after inordinate delay, lacked merit and should be dismissed with costs.
7. The application was heard through written submissions.

Applicant's Submissions

8. The Applicant filed submissions dated 3rd January 2025. The Applicant submitted that, according to the [Advocates Remuneration Order 2014](#), the Respondent's bill of costs should have been taxed at a total of Kshs. 148,645/-. The Applicant submitted that despite the Respondents seeking to have the bill of costs taxed at a total of Kshs. 194,190/-, the taxing officer in disregard of the [Advocate's Remuneration Order 2014](#) proceeded to tax the bill at an exorbitant and unjustifiable sum of Kshs. 699,345/- without reasonable justification. The Applicant reiterated that his previous advocates did not communicate the outcome of the case and taxation to the Applicant, making it impossible for the Applicant to give instructions to the said advocates within a reasonable time as stipulated by law.
9. The Applicant submitted that the delay in filing the reference dated 29th May 2023 was not inordinate for the reason that the certificate of costs was issued on 30th March 2023, while the reference was filed on 29th May 2023, 9 days after the stipulated period provided by law. The Applicant reiterated that the delay was occasioned by his previous advocates, who failed to communicate the outcome of the case and the taxation of the bill of costs. The Applicant submitted that he had not been indolent. The Applicant submitted that upon learning of the outcome of the main suit and the taxation of the bill of costs, he immediately instructed his current advocates on record to file the reference. In support of these submissions, the Applicant cited, [Selestica v Gold Rock Development Ltd.](#) [2015]eKLR and [Bank of Africa Kenya Limited v Put Sarajevo General Engineering Co. Ltd & 2 Others](#) [2018]eKLR, which I have considered.



The Respondents' Submissions

10. The Respondents filed submissions dated 7th April 2025. The Respondents submitted that time is a crucial component in the dispensation of justice, hence the maxim: Justice delayed is justice denied. The Respondents submitted that it is a litigant's legitimate expectation where they seek justice that the same will be dispensed timeously. The Respondents submitted that in the instant case, the Respondents are entitled and should be allowed to enjoy the costs awarded to them and certified on 30th March 2023. The Respondents submitted that the Applicant sought extension of time to file a reference, a whole year after filing the reference. The Respondents submitted that the leave sought is an equitable remedy, and he who seeks equity must do equity. The Respondents submitted that extension of time is not a right of a litigant but a discretionary remedy for which a litigant must lay a basis before the same can be granted by the court. For the principles applied by the court on applications for extension of time, the Respondents cited *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others*, Supreme Court Application No. 16 of 2014[2014] eKLR and *Utalii Transport Company Limited & 3 Others v NIC Bank Limited & Another* [2014] eKLR.
11. The Respondents submitted that the delay in filing the reference was inordinate, inexcusable and had not been satisfactorily explained. The Respondents submitted that the application lacked merit, was an afterthought, made in bad faith and an abuse of the Court's process. The Respondents submitted that the Applicant abused the court's process by filing a reference out of time without seeking extension of time to do so. The Respondents submitted that the application was aimed at circumventing the wheels of justice.

Analysis and Determination

12. I have considered the application, the affidavit in support thereof and the grounds of opposition filed in opposition thereto. I have also considered the submissions filed by the parties. The only issue arising for determination in the application is whether the court should grant leave to the Applicant to file a reference out of time.
13. Paragraph 11 of the *Advocates Remuneration Order* provides as follows:
 - “ 11. Objection to decision on taxation and appeal to Court of Appeal
 - (1) 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.
 - (2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds for his objection.
 - (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 - (4) The High Court shall have power in its discretion by order to enlarge time fixed by subparagraph (1) or (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 may be so made notwithstanding that the time sought to be enlarged may have already expired.”

14. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (*supra*), cited by the Respondents, the Supreme Court stated as follows:

“Discretion to extend time is indeed unfettered but it's incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were extenuating circumstances that could enable the Court to exercise discretion in favour of the applicant. In doing so the following principles are applicable thus:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party.
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.
- iii. Whether the Court ought to exercise discretion to extend time, is a consideration to be made on a case to case basis
- iv. Whether there is a reasonable reason for the delay, which ought to be explained to the satisfaction of the Court.
- v. Whether there would be any prejudice suffered, the respondent if the extension was granted.
- vi. Whether, the application had been brought without undue delay and
- vii. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”

15. In *Paul Wanjobi Mathenge v Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal stated as follows on extension of time:

“...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.”

16. It is common ground that the taxing officer delivered the ruling on the Respondents' bill of costs dated 23rd June 2022 on 7th December 2022 and that the certificate of costs was issued on 30th March 2023. The time within which the Applicant was to put in motion the process of challenging the taxation by the taxing officer started running on 7th December 2022, when the taxation ruling was delivered and not on 30th March 2023 when the certificate of costs was issued as erroneously believed by the Applicant.



The Applicant filed the reference on 29th May 2023. There is no evidence that the Applicant gave notice to the taxing officer of the items in the Respondents' bill of costs whose taxation he was objecting to before filing the reference as required under paragraph 11 (1) of the *Advocates Remuneration Order*. A reference filed under paragraph 11 (2) of the *Advocates Remuneration Order* without a notice of objection served under paragraph 11 (1) of the *Advocates Remuneration Order* is incompetent.

17. In *Nyiba, Mukoma & Company Advocates v Reynolds Mwangi Kinyanjui & Another*, Nairobi ELC misc. Application No. 148 of 2014, this court stated as follows:

“As was held by the court in the cases of *Ufundi Co-operative Savings and Credit Society v Njeri Onyango & Company Advocates* [2015] eKLR and *Kenya Airports Authority v Queens Insurance Agency*, Nairobi HCC No. 1430 of 2000, the filing of a notice of objection to taxation is a fundamental step for a party seeking to file a reference and failure to do so is not a technical issue which can be overlooked under Article 159 (2) (d) of the *Constitution* for the sake of substantive justice. In the circumstances it is my finding that the applicant's reference is not properly before the court. The application is fatally defective for failure to comply with a fundamental step in the filing of a reference.”

18. The Applicant's reference is defective the same having been filed without the Applicant having filed a notice of objection to taxation by the taxing officer as required under paragraph 11(1) of the *Advocates Remuneration Order*. The application before the court is not seeking leave to file a notice of objection to taxation, but for the reference already filed to be deemed as having been properly filed within time, and in the alternative, leave to file a reference out of time. I have already made a finding that the Applicant's reference is defective. Such a reference cannot be deemed to have been properly filed. The Applicant had skipped an essential step when filing the reference, namely, the filing of a notice of objection to taxation. The court would have considered the application differently if the Applicant had sought leave to file both the notice of objection to taxation and the reference out of time. That is not the case here. It follows from the foregoing analysis that the Applicant's application is not for granting. I wish to add that the application before me was filed on 24th July 2024, more than 1 year after the filing of the defective reference on 31st May 2023. Whereas the Applicant may have had reasonable excuse for not filing the reference within time, no reasonable explanation has been given by the Applicant for applying for extension of time to file a reference 1 ½ years after the ruling of the taxing officer on taxation. It is therefore my finding that the application before the court was brought after inordinate delay, which has not been explained.

Conclusion

19. In conclusion, I find no merit in the Originating Summons dated 24th July 2024. The same is dismissed with costs to the Respondents.

DELIVERED AND SIGNED AT KISUMU ON THIS 24TH DAY OF JULY 2025

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Kinyua h/b for Ms. Ondoro for the Applicant

Ms. Yunus h/b for Ms. Mawinda for the Respondents

Ms. J. Omondi-Court Assistant

