



REPUBLIC OF KENYA



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**Meya Agri Traders Limited v Ecobank Kenya Limited (Civil Appeal
(Application) 108 of 2016) [2025] KECA 654 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KECA 654 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) 108 OF 2016**

PM GACHOKA, JA

APRIL 9, 2025

[IN CHAMBERS]

BETWEEN

MEYA AGRI TRADERS LIMITED APPLICANT

AND

ECOBANK KENYA LIMITED RESPONDENT

(An application for extension of time to file a reference against the assessment of costs of the taxing master (Hon. L. Akoth) delivered on 31st October 2024 in Civil Appeal No. 108 of 2016)

RULING

1. By Notice of Motion dated 13th December 2024, the applicant has invoked the provisions of section 3A (1) and (2) of the [Appellate Jurisdiction Act](#), rules 4, 43, 44, 45 and 49 of the [Court of Appeal Rules](#) seeking:
 1. ... Spent;
 2. That this Honourable Court be pleased to grant an order for temporary injunction, restraining the appellant, its employees, agents or other authorized personnel, from proclaiming, attaching, selling and or otherwise disposing of the respondent's property in execution of the ruling and orders delivered by Hon. Lina Akoth – Deputy Registrar on 31st October 2024 in this appeal pending the hearing and determination of this application;
 3. That this Honourable Court be pleased to extend the time within which a reference can be lodged by respondent against the ruling and orders delivered by Hon. Lina Akoth – Deputy Registrar on 31st October 2024 in this appeal and give directions on filing and hearing thereof;
 4. That this Honourable Court be pleased to make such further orders and directions as may be appropriate to meet the ends of justice;



5. That the costs of this application be in the cause.
2. The application is supported by the grounds on its face and the supporting affidavit of Emmanuel Munene, the applicant's Counsel, practicing in the nature and style of Messrs. KRK Advocates LLP. The facts giving rise to the application are that the respondent, who is the appellant in this appeal, succeeded in its appeal by judgment of the Court delivered on 5th June 2020. The respondent was also awarded costs of the appeal. In the resulting circumstances, the respondent filed its party and party bill of costs dated 2nd August 2024 against the applicant, who is the respondent in the main appeal.
3. In her ruling dated 31st October 2024, the taxing master taxed the respondent's party and party bill of costs at Kshs. 2,365,496.00. The ruling was served upon the applicant on 5th November 2024.

On 11th November 2024, in pursuance of rule 11 (1) of the [Advocates Remuneration Order](#), the applicant wrote to the taxing master seeking for reasons for the ruling. According to the applicant, those reasons were not manifest in the taxing master's ruling. In the meantime, the applicant reached out to the respondent on 19th November 2024 seeking to arrive at an amicable resolution regarding the payment of those costs. The applicant did not receive any response from the taxing master thereby prompting the filing of the present application.

4. The applicant explained the delay in filing the reference within the stipulated timelines as follows: its firm of advocates were transitioning to new offices resulting in logistical challenges and misalignment of the calendar on time-sensitive matters.
5. The applicant urged this Court to allow the application for the following reasons: the respondent had already threatened to execute; the applicant was apprehensive that if execution is allowed to proceed, there was no guarantee that the sums recovered would be refunded if the reference is found to have merit; the intended reference was merited as it raised significant issues of law with high chances of success; the failure to grant the order sought would amount to an academic exercise and a waste of judicial resources, time and escalation of costs; the reference sought to ensure that costs are awarded in accordance with proper legal principles and prevent unjust decisions; it was in the interest of justice that the orders sought are granted; and no prejudice would be suffered by the respondent if the orders sought are granted.
6. The application is vehemently opposed. In its replying affidavit sworn on 15th January 2025 by Joseph Nyoike Mutonyi, the respondent's Counsel, the respondent prayed that the application be dismissed on account of the following reasons: following the ruling of 31st October 2024, the applicant was by rule 117 of this [Court's Rules](#) required to file its reference within seven days; as a consequence, there was a delay of 21 days that was not explained; the rules of this Court did not require a notice of objection; in any event, the reasons for the ruling were apparent in the ruling; the bill of costs as taxed did not warrant a reference; while acknowledging the correspondence between Counsel for both parties, it was deposed that the respondent intimated its intentions to commence execution since no reference was filed; and a prayer for injunction could only be allowed after a party filed a notice of appeal.
7. In rejoinder, the applicant filed its further affidavit sworn by Emmanuel Munene on 20th January 2025. The applicant reiterated the contents of its application and further deposed as follows: the applicant filed a reference dated 11th November 2024 (annexed to the further affidavit) after it received no response from the taxing master; that it elected to await the taxing master's reasons in order to assess whether to file its reference but was caught by limitation of time; the filing of a reference is not galvanized by filling a notice of appeal; the grant of injunctive relief is not contingent upon the filing of a notice of appeal; the overriding objectives under rule 43 of this [Court's rules](#) succor and cure an application for injunction filed bereft of a notice of appeal; the delay of 21 days in filing the reference



was not inordinate; and the inadvertent oversight by the applicant's Counsel should not be visited upon the applicant. Finally, the applicant relied on the directions of this Court dated 17th December 2024 to urge that since directions were issued on the reference, the respondent was automatically restrained from proceeding with execution.

8. The application was canvassed by way of written submissions. In its submissions together with its list and digest of authorities dated 22nd January 2025, the applicant submitted that it had met the threshold for grant of an order for temporary injunction by dint of Rules 5 (2) (b) and 43 of this *Court's Rules*. Lastly, it was entitled to leave to file its reference out of time. The respondent filed its written submissions together with its list and digest of authorities both dated 26th February 2025. It prayed that the application be dismissed as the threshold for grant of the orders sought had not been met.
9. I have considered the application, the affidavits in support and the annexures thereto as well as the affidavit in opposition, examined the parties' diametrically opposed written submissions and analyzed the law. The applicant seeks two prayers: the first one is for an order for injunction restraining the respondent from proceeding with execution and secondly, for extension of time to file a reference out of time.
10. Dealing with the first relief sought, the applicant seeks for an order of injunction restraining the respondent from proclaiming, attaching, selling and or otherwise disposing of the respondent's property in execution of the ruling and orders delivered by Hon. Lina Akoth – Deputy Registrar on 31st October 2024 in this appeal pending the hearing and determination of this application. Firstly, from the underlined words, the order is spent since the application has already been heard. Most pertinently however, the applicant has invoked the jurisdiction of a three-judge bench in that prayer. See Rule 53 (2) of this *Court's Rules* provides that an application for injunction shall not be heard by a single judge. It is essential and extremely critical for parties to familiarize with rules of procedure to avoid such technicalities befalling a party when drafting their pleadings. In this instance, the oxygen principle cannot even cure this technicality which goes to the root of jurisdiction. It is for those foregoing reasons that I find that I cannot make a determination on prayer (2) of the application and shall accordingly proceed to determine the substantive prayer.
11. In its application, the applicant substantively prays for extension of time to file its reference. Rule 4 of the Court of Appeal Rules provides that the Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended. Given the discretionary nature of this powers donated therein, certain principles have been enunciated by this Court in determining whether to allow or dismiss an application of this nature. In *Paul Wanjohi Mathenge v. Duncan Gichane Mathenge* [2013] eKLR, the Court gave the following yardstick:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”
12. Is the application qualified? It is not disputed that by ruling of the taxing master dated 31st October 2024, the respondent's party and party bill of costs dated 2nd August 2024 was taxed at Kshs. 2,365,496.00. The applicant received the ruling on 5th November 2024. The applicant then wrote



to the taxing master on 11th November 2024 requesting for the reasons for its ruling. The letter was written in pursuance of rule 11 (1) of the Advocates Remuneration Order. The applicant is yet to receive the reasons for that ruling. In the meantime, the applicant reached out to the respondent on 19th November 2024 seeking to arrive at an amicable resolution regarding the payment of those costs.

13. The applicant has urged this Court to allow the reference on account of the fact because the taxing master is yet to furnish it with the reasons, it was caught by limitation of time to file the reference. Furthermore, its firm of advocates were transitioning to new offices resulting in logistical challenges and misalignment of the calendar on time-sensitive matters. It is for those reason that the application for extension of time was filed. On the merits of the reference, it submitted that the intended reference was merited as it raised significant issues of law with high chances of success as it sought to ensure that costs are awarded in accordance with proper legal principles.
14. Rule 117 (3) of the Court of Appeal Rules provides that an application for a reference may be made to the Registrar informally at the time of taxation or by writing within seven days thereafter. As rightly pointed out by the respondent, the applicant was required to lodge its reference within seven days in writing or informally at the time of taxation. That did not occur. Instead, the applicant advanced several reasons why it did not file the reference on time.
15. Firstly, it is important to note that the manner of procedure of this Court is governed by the Court of Appeal Rules. In that regard, this Court is not bound by the provisions of the Advocates Remuneration Order as the procedure for filing a reference is well captured in the Court of Appeal Rules. As observed by the respondent, there is no notice of objection that is required in the Court of Appeal.
16. Critically, as at the time of lodging the present application, the applicant was yet to file its reference. Though the applicant shrewdly annexed the letter of reference dated 11th November 2024, the same was only lodged on 18th December 2024; after the application had been filed. Was there anything to extend when there was nothing that had been filed in the first place? I think not. The reference was only filed after the fact defeating the very purpose of seeking extension of time. It was a non-starter. Furthermore, I am not satisfied that the reasons advanced for delay warrant an exercise of discretion by this Court. The applicant was only interested in the reference after the respondent threatened execution. Had the respondent not informed it of its intention to execute, I am not persuaded that the applicant would have been precipitated to file the reference.
17. Accordingly, I come to the unwavering conclusion that not only is the application incompetent but is also unmerited. The same is dismissed with costs to the respondent.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF APRIL 2025.

M. GACHOKA C.Arb, FCIArb.

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

signed

DEPUTY REGISTRAR

