



**Kirimi v Gitangata (Environment & Land Miscellaneous Case
E004 of 2024) [2024] KEELC 4077 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4077 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND MISCELLANEOUS CASE E004 OF 2024**

CK NZILI, J

MAY 15, 2024

BETWEEN

JOHN MARK KIRIMI APPLICANT

AND

LOYFORD MUTHURI GITANGATA RESPONDENT

RULING

1. The court is asked to extend the time for the applicant to file a reference against a taxing master's decision made on 19.10.2023 *ex parte* and stay its execution pending the filing and the hearing thereof. The reasons are contained on the face of the application and in the supporting affidavit of John Mark Kirimi, sworn on 2.2.2024.
2. The applicant contends that the bill was taxed without compliance with the rules and principles on taxation, no reasons for it have been given execution for the same has been initiated, and that the sum taxed is excessive or colossal, bearing in mind the subject matter was a consolidated petition.
3. In support of the application, the applicant has attached a copy of the 3rd respondent's bill of costs dated 8.2.2022, warrants of attachment dated 19.12.2023, and an auctioneer's fee note dated 27.1.2024. The application is opposed by grounds of opposition dated 28.2.2024.
4. A party seeking to question a taxed bill of costs is required under paragraph 11 (1) of the Advocate's Remuneration Order to file a reference within 14 days. What is now sought is an extension of time since no reference was filed on time or at all. The decision sought to be challenged, including the certificate of costs has not been attached to this application. A letter seeking a copy and or reasons for the taxation has also not been annexed to the application before the court.
5. Extending the time for the filing of the reference is a discretionary power of this court based on, among other things, the reasons for the delay, the period of the delay, the degree of prejudice to the opposite



party, the public importance of the matter, and the interests of justice. See *Nicholas Arap Korir Salat vs Independent Electoral & Boundaries Commission (2014)* eKLR.

6. As to stay of execution, the guiding principles are, among other things, whether the application was filed timeously, demonstration of substantial loss, offer for the security of costs, and whether it is in the interest of justice to grant the orders sought.
7. In *RWW vs EKW (2019)* eKLR, the court observed that the purpose of an application for stay is to preserve the subject matter in dispute so that the applicant may exercise his undoubted right of appeal, while also weighing this right against that of the successful party, who should not be kept away from enjoying the fruits of his litigation.
8. In the application before the court, the applicant has not said that the respondent is a man of straw who may not refund the taxed costs in the event the reference is successful. The delay in applying for a stay is not explained. The applicant did not state when the constitutional reference was determined and what efforts he made to pay or offer a proposal for the costs. Further, the applicant has not offered any security for the due realization of the decree should the reference be unsuccessful.
9. Again, the applicant did not disclose if he objected to the bill of costs before it was taxed and for what reasons. It is not enough to make allegations without substantiation that a party was diligent before the taxing master. Further, the draft proposed reference has not been attached to the application for this court to establish the prima facie merits of the same against the need to preserve the substratum of the intended reference based on any peculiar circumstances.
10. The upshot is that I find no merits in the application. The same is dismissed with costs. Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 15TH DAY OF MAY, 2024

In presence of

C.A Kananu

Mugambi for applicant

Otieno C. for respondent

HON. C K NZILI

JUDGE

