



**Abdalla & 2 others v Mjape & 2 others (Environment & Land Case 34 & 37 of 2020 (Consolidated)) [2025] KEELC 541 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 541 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 34 & 37 OF 2020 (CONSOLIDATED)  
FM NJOROGE, J  
FEBRUARY 13, 2025**

**BETWEEN**

**SWAFIA ABDALLA AKA SWAFIA SWALEH MAHDI ..... 1<sup>ST</sup> PLAINTIFF  
FATMA SWALEH MAHDI (AS ADMINISTRATRIXES OF THE ESTATE OF  
SWALEH MAHDI - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PROF GEORGE MJAPE ..... DEFENDANT**

**AS CONSOLIDATED WITH  
ENVIRONMENT & LAND CASE 37 OF 2020**

**BETWEEN**

**PROF GEORGE MJAPE ..... PLAINTIFF**

**AND**

**SWAFIA ABDALLA AKA SWAFIA SWALEH MAHDI ..... 1<sup>ST</sup> DEFENDANT  
FATMA SWALEH MAHDI (AS ADMINISTRATRIXES OF THE ESTATE OF  
SWALEH MAHDI - DECEASED) ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Notice of Motion dated 30/7/2024 has been filed by the defendant. It prays for the following orders:

- 1. Spent



2. That the Court be pleased to extend time for filing this application and that it be deemed to have been properly filed;
  3. That there be a stay of execution of the ruling of the taxing master delivered on the 5<sup>th</sup> February 2024 pending the hearing and determination of this application inter partes;
  4. That the decision of the taxing master as enclosed in the ruling delivered on 5<sup>th</sup> February 2024 be with respect of (sic) items nos 1,7A, and 14 in the bill of costs be (sic) dated 7/10/22 set aside and taxed afresh;
  5. That in the alternative the court be pleased to order that the respondent's bill of costs in respect to (sic) items nos 1,7A, and 14 be taxed afresh by another taxing master;
  6. That the costs of this application be provided for.
2. The application is premised on the grounds on its face as well as in the attached supporting affidavit of Stephen Jumbale, advocate. They are that the applicant despite request is yet to be supplied with reasons for the ruling on the items set out yet the plaintiffs have intimated their desire to proceed with execution; and that the taxing master failed to properly direct herself on the instructions fees as such she awarded an amount which is excessive and unreasonable.
- a. The application is opposed through the grounds of opposition dated 9/8/2024 which are as follows:
  - b. That the application is an omnibus application and is incompetent for want of form and substance;
  - c. The applicant is guilty of laches;
  - d. The seeking of stay of execution is a duplication of earlier application;
  - e. The obtaining of an ex parte stay of execution is an abuse of the court process;
  - f. The ruling of the taxing master contains the reasons for the taxation of every item in the party and party bill of costs;
  - g. There is no proof that the taxing officer proceeded on the wrong principle in exercise of her discretion;
  - h. The defendant has lost interest in the earlier application which has been pending for over 1 year;
  - i. The deponent was incompetent to swear to facts in the affidavit.
3. The plaintiffs also filed a sworn joint replying affidavit dated 12/8/2024 in opposition to the application in which they adopted their grounds of opposition as though they were set out therein verbatim. Parties relied on their respective affidavits for or against the motion. I have considered the contents of those affidavits.

#### **Determination.**

4. The application before me has been strenuously objected to. The preliminary issues in the objection to the application are that:



- a. it lacks procedural rectitude, that it is an omnibus application that seeks several divergent prayers including extension of time, stay of execution, and an objection/ reference in respect of a taxation under section 11 of the *Advocates Act*;
  - b. it is supported by an advocate's affidavit on oath;
  - c. it is a second application with regard to stay of execution;
  - d. the taxing master's ruling contains the reasons for the taxation of every item in the bill of costs.
5. On the foregoing grounds this court is urged to dismiss the same.
  7. In respect of the first ground it is undeniable that the application is what can be termed as an omnibus application. It seeks prayers quite different and under varying legal provisions.
  8. This court has not given leave for the applicant to challenge the decision of the taxing master out of time yet it appears that the application for that purpose is before it right now. In the same application, extension of time for the purpose has been sought. the prayers have been laid out in the manner that the prayer for extension of time is to be considered first before the rest. I find nothing wrong in that state of affairs because this court can not proceed to grant the other prayers without determining whether extension of time ought to be granted.
  9. The second objection is that the application is supported by the advocate's affidavit made on oath. He does not conceal the fact that he does not have express authority and at paragraph 1 of the supporting affidavit he simply states that he is under ostensible authority to swear the affidavit. This ground is merited since it is the client not the advocate who is challenging the taxation. The affidavit of the person who is impugning the taxing master's decision is crucial because the case does not belong to his advocate. True the advocate can swear to matters of procedure and court action but the desire and decision to object must be seen to come from the client. For this reason the application must fail.
  10. When it comes to extension of time it is trite that the delay has to be explained. In this case the period within which the challenge to the decision of the taxing master has to be lodged under regulation 11 is 15 days. The delay in lodging the present application for extension of time lasted from 19<sup>th</sup> February 2024 to 30<sup>th</sup> July 2024, a period of nine months and eight days which I find to be inordinate and on which, failing any explanation therefor, the application must be dismissed.
  11. The explanation given by the applicant is that the applicant wrote to the taxing master on 15<sup>th</sup> February 2024 which letter was delivered on 19<sup>th</sup> February 2024 seeking reasons for her decision on the items whose taxation he was discontented with and no reply has been received ever since.
  12. First, this court thinks that the applicant is not being forthright in using failure to give reasons as the premises for the delay and thus the application for extension because the reasons are right there in the ruling dated 5/2/2024.
  13. Secondly, in any event where no reasons have been given an applicant is entitled to simply file a reference within the prescribed time because usually the rulings of the taxing masters incorporate the reasons for their decisions as courts have previously observed in their decisions. In the case of *Evans Thiga Gaturu v Kenya Commercial Bank Limited* [2012] eKLR the court stated as follows:
  14. In most cases the court is aware that the taxing officers in their decisions on taxation do deliver comprehensive rulings which are self-contained thus obviating the necessity to furnish fresh reasons thereafter. In such circumstances, it would be fool hardy to expect the taxing officer to redraft another "ruling" containing reasons."



15. I therefore find that there is no proper explanation for the delay in filing the reference and the extension of time sought is unmerited and the application dated 30/7/2024 is hereby dismissed with costs to the respondents.
16. Since the application relates to matters taxation and it is the execution of ruling and order of the taxing master that is being challenged, I find no merit in the objection to the application on the basis that it is a second application with regard to stay of execution; I think the applicant, save for the failure of the application on the other grounds, has expressed himself well enough on that point.
17. On the last point, I think I have addressed it sufficiently while dealing with the point of inordinate delay hereinabove and I do not need repeat that argument here: that ground has no merit.
18. I therefore dismiss the application dated 30/7/2024 on the above grounds. Its costs shall be borne by the applicant.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**MWANGI NJOROGI**

**JUDGE, ELC MALINDI.**

