



**GN Thiongo Advocates v Mailua Estates Limited (Miscellaneous Application E025 of 2022) [2024] KEELC 14148 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14148 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
MISCELLANEOUS APPLICATION E025 OF 2022  
MN GICHERU, J  
DECEMBER 18, 2024**

**BETWEEN**

**GN THIONGO ADVOCATES ..... APPLICANT**

**AND**

**MAILUA ESTATES LIMITED ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 2/10/2023. The motion which is by Mailua Estates Limited seeks two residual orders.
3. That the judgment entered on 18/9/2023 pursuant to the application dated 10<sup>th</sup> August 2023 be set aside forthwith.
4. That the costs of this application be in the cause.
2. The motion is based on six (6) grounds and is supported by an affidavit sworn by B.W. Kariuki advocate dated 2/10/2023 which has three (3) annexures. The gist of the motion is as follows. Firstly, the counsel for the respondent was present when the ruling on the bill of costs was delivered. Secondly, due to ill health she was unable to file a reference against the ruling on costs in time. Thirdly, on 11/9/2023, she filed an application for enlargement of time within which to file a reference. Fourthly, on 18/9/2023 she failed to attend court due to an error on her part as she had thought it would be on 28/9/2023. On 28/9/2023, she realized that the matter had proceeded on 18/9/2023. Fifthly, no directions were given on the pending application for enlargement of time. Finally, the respondent has an arguable case in reference and should not be condemned unheard due to an excusable error on her part.
3. As late as 11<sup>th</sup> December 2024 when the court assistant checked on the Case Tracking System (CTS) there was no replying affidavit to the motion dated 2/10/2023. From the written submissions, dated 27/11/2024 it is mentioned that Moses Siagi advocate swore a replying affidavit dated 19/9/2024 where he has raised the following facts. Firstly, counsel for the respondent fully participated in the taxing



process. Secondly, she attended court on 12/7/2023. Thirdly, she was served with the certificate of costs and decree in July 2023. Fourthly, counsel does not dispute that she was served with the notice of motion dated 10/8/2023 that sought entry of judgment pursuant to the certificate of costs incurred.

4. Counsel for the parties have filed written submissions dated 18/11/2024 and 27/11/2024 respectively. The following issues arise in the submissions.
  - i. Whether a party should be condemned unheard.
  - ii. Whether this court can enlarge time within which to file a reference.
5. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit and annexures, the written submissions by both sides as well as the entire record. I agree that the two issues identified by learned counsel for the parties will decide the application.
6. On the first issue, I find that the respondent should not be condemned unheard except for good reasons. The respondent has given a good reason as to why counsel could not prosecute the reference within the prescribed time, namely illness. I have seen evidence on record to show that learned counsel was on bed rest for a month. I find this to be a good reason for failure to file the reference on time.
7. Regarding the second issue, I find that under order 50 rule 6 of the Civil Procedure Rules this court has discretion to enlarge time. The respondent has demonstrated that it has good reasons for challenging the hefty award of costs to the applicant and it should be allowed a fair hearing in this regard. The applicant will not suffer any prejudice because it too will be heard in the reference.

Finally, there is another reason why the respondent should be heard. The notice of motion dated 10<sup>th</sup> August 2023 seeking to enter judgment for the bill of costs was heard and allowed by the Deputy Registrar when ordinarily, it should have been dealt with by the Judge.

For the above stated reasons, I find merit in the motion dated 2/10/2023, which I allow in terms of prayer 3. Costs in the cause.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 18<sup>TH</sup> DAY OF DECEMBER 2024.**

**M.N. GICHERU**

**JUDGE**

