



Kavila v Government of Makueni County & 2 others (Environment & Land Miscellaneous Case E002 of 2024) [2024] KEELC 14011 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14011 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2024
TW MURIGI, J
DECEMBER 18, 2024**

BETWEEN

JACKSON MUTUA KAVILA APPLICANT

AND

GOVERNMENT OF MAKUENI COUNTY 1ST RESPONDENT

COUNTY ASSEMBLY OF MAKUENI 2ND RESPONDENT

**MAKUENI COUNTY SAND CONSRVATON AND UTILIZATION
AUTHORITY 3RD RESPONDENT**

RULING

1. This ruling is in respect of the Chamber Summons dated 8th February, 2024 brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* in addition to Paragraph 11(4) of the Advocates (Remuneration) Order 2014 in which the Applicant seeks the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That pending inter partes hearing of this application, this Honourable court be pleased to issue an order staying the execution of the Ruling of the Taxing Officer delivered on 14th August 2023 and any other consequential proceedings.
 - d. That this Honourable court be pleased to grant the Applicant herein leave to file an objection and Taxation Reference to this Honourable Court against the ruling of the Honourable Taxing Officer delivered on 14th August 2023 out of time.



- e. That the leave granted in prayer (4) above do operate as stay of execution of the ruling of the Taxing Officer aforesaid and any other consequential proceedings pending hearing and determination of the intended reference.
 - f. That the objection to the Taxing Officer and the application for reference annexed hereto be deemed as duly filed and served upon payment of the requisite fees.
 - g. That costs of the application be in the cause.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Jackson Mutua Kavila sworn on even.

The Applicants Case

3. The Applicant averred that on 14th August, 2023, the Taxing Officer delivered a ruling in respect of a party and party bill of costs dated 24/02/2021 which was taxed at Kshs 672,985/-. He further averred that he fell ill at the time of delivering the ruling and shortly thereafter. That being a senior citizen and a man of meagre means, he was unable to instruct Counsel to file the Objection within the statutory period as he was still recuperating. He averred that he is strongly aggrieved by the said decision which he has set out to oppose through a Reference.
4. He further averred that he is apprehensive that the Respondents will execute the decision as they have sent a demand letter dated 25/09/2023 and his personal goods have been proclaimed in lieu of the execution. In conclusion, he urged the court to allow the application as prayed.

The Respondent's Case

5. The Respondents opposed the application through the replying affidavit of Njeru Runji, the Legal Officer County Government of Makueni. He admitted that the Respondents have commenced execution of the decree dated 19th September 2023. He further averred that the order issued on 11th October 2023 attaching the Applicant's account held with Kenya Commercial Bank was discharged as the Applicant did not have sufficient money with the Garnishee Bank. He went on to state that after the Respondents issued a proclamation notice on 29th January 2024, the Applicant hid his goods and filed the present application.
6. He contended that the application herein is meant to deny the Respondents the fruits of their judgment. According to the deponent, the court is functus officio and should allow the execution to proceed against the Applicant.

The Response

7. The Applicant filed a supplementary affidavit in response to the Respondents averments. He averred that he had filed an application dated 09/11//2023 which was withdrawn due to an inadvertent error hence, the application herein is not meant to delay the execution process. He contended his reference is arguable as it made on the basis of an error of principle in assessing the costs due. He denied having hidden the proclaimed goods and stated that he was willing to abide by any conditions that this court may impose for the due performance of the decree.
8. The application was canvassed by way of written submissions

The Applicant's Submissions

9. The Applicant filed his submissions dated 2nd May 2024.



10. In his submissions, Counsel reiterated the contents of the affidavit in support of the application.

The Respondents Submissions

11. The Respondents filed their submissions dated 8th October 2024

12. On their behalf, Counsel identified the following issues for the court's determination:-

- a. Whether the Applicant has laid a proper case for extension of time.
- b. Whether the Applicant has laid a proper case for the grant of stay of execution.

13. On the first issue, Counsel submitted that the Applicant has not adduced any evidence to show that he failed to file the reference on time because he was ailing. Counsel further submitted that the application is a knee jerk reaction to the execution process. Counsel further submitted that the Applicant has not met the threshold to warrant extension of time to file a reference out of time.

14. With regards to the second issue, Counsel submitted that the Applicant has not satisfied the conditions for the grant of stay of execution. Counsel argued that the mere intention to file a reference or the fact that the reference will be rendered nugatory is not by itself a valid ground for stay of execution. Counsel argued that payment of costs is not an irreparable loss as the same can be recovered from the Respondents if the Applicant succeeds in his reference.

15. Counsel further submitted that the Applicant has not offered any security for the due performance of the decree.

16. Concluding his submissions, Counsel urged the court to dismiss the application with costs.

Analysis and Determination

17. Having considered the application, the respective affidavits and the rival submissions, the following issues fall for determination: -

- i. Whether the Applicant has made a compelling case to warrant enlargement of time to file a reference.
- ii. Whether the Applicant is entitled to stay of execution of the Taxing officer's ruling.

18. The Applicant is seeking extension of time to file a reference against the ruling delivered on 14th August 2023.

19. Paragraph 11 of the Advocates Remuneration Order requires that a party aggrieved by the taxing officer's decision to apply to a judge by Chamber Summons setting out grounds for opposition within 14 days. If a party is still aggrieved by the decision of the judge, then they should appeal to the Court of Appeal.

20. The legal framework on extension of time is clearly stipulated under paragraph 11(4) of the Advocates Remuneration Order which provides that;

- (4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (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 the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired."



21. The decision whether or not to extend time is discretionary. The Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR succinctly laid down the principles to guide courts in applications for extension of time as follows:-
- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - 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 should exercise the 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. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
22. Similarly, in the case of *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi Civil Application No. Nai 251 of 1997* the Court of Appeal held that:-
- “It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the 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 reason for the 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.”
23. The ruling of the Taxing officer was delivered on 14th August, 2023. The instant application was filed on 8th February 2024.
24. The Applicant admitted his failure to comply with the provisions of Paragraph 11 (1) and (2) of the Advocates (Remuneration) Order.
25. The Applicant explained that the delay in complying with the provisions Paragraph 11(1) and (2) of the Advocates Remuneration Order was occasioned by his illness. As correctly submitted by the Respondents, the Applicant did not adduce any evidence to support his claim that he was ailing. Be that as it may, sickness is a state which is beyond human control. The Applicant has expressed his intention to appeal against the ruling of the taxing officer. From the foregoing, I find that the Applicant has given a reasonable explanation for the delay in filing the reference on time. In the circumstances, I will allow the prayer for extension of time in the interest of justice.
26. The Applicant sought for a stay of execution pending the filing of the reference. He contended that he is apprehensive that the Respondents may proceed to execute if a stay of execution is not granted.



In the case of Labh Singh Harman Singh Ltd v Attorney General & 2 others [2016] eKLR the court observed as follows: -

“I am unable to agree with the submission by counsel for the respondent that the Court has no power to order stay in cases of taxation for costs as exists in the Civil Procedure Rules. It is clear to me that taxation of costs is part of the execution process, complete with its provisions for stay of execution, under the Civil Procedure Rules. Indeed, Section 94 of the Civil Procedure Act provides as a general rule that execution of orders of the court should await the confirmation of the costs by taxation unless the Court grants leave for execution before taxation of costs.”

27. Having found that the Applicant is entitled to orders for extension of time, this court finds and holds that it will be in the interest of justice to stay execution of the taxation pending the hearing and determination of the reference.
28. In the end, I find that the application dated 25th September 2023 is merited and the same is hereby allowed in the following terms:-
 1. The Applicant be and is hereby granted Fourteen (14) days leave to file and serve a Reference against the Ruling of the Taxing Officer delivered on 14th March, 2023.
 2. An order for stay of execution of the Ruling of the Taxing Officer delivered on 14th March, 2023 is hereby granted pending the hearing and determination of the reference.
 3. The Applicant shall deposit the decretal amount in a joint interest earning account within (14) days from the date hereof.
 4. In default of order (3), the order of stay of execution shall automatically lapse.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 18TH DAY OF DECEMBER, 2024.

In the presence of:

Mundia holding brief for B Nzei for the Applicant

Muuo holding brief for Mulecho for the Respondent

