



REPUBLIC OF KENYA



KENYA LAW
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**Radio Frequency Systems (EA) Limited v RF Systems Limited &
2 others (Commercial Miscellaneous Application E109 of 2023)
[2025] KEHC 860 (KLR) (Commercial and Tax) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E109 OF 2023**

RC RUTTO, J

JANUARY 31, 2025

**IN THE MATTER OF SECTIONS 57 AND 58 OF THE COMPANIES ACT, 2015
IN THE MATTER OF FAILURE BY THE REGISTRAR OF COMPANIES TO
STRIKE OFF RF SYSTEMS LIMITED FROM THE COMPANY REGISTER**

BETWEEN

RADIO FREQUENCY SYSTEMS (EA) LIMITED APPLICANT

AND

RF SYSTEMS LIMITED 1ST RESPONDENT

JOHN KAMAU MWAURA 2ND RESPONDENT

THE REGISTRAR OF COMPANIES 3RD RESPONDENT

RULING

1. Before this court is a preliminary objection dated 11/3/2024 filed by the applicant in respect of the 2nd respondent's application dated 4/3/2024. The preliminary objection is based on the grounds that this Court lacked jurisdiction to hear and determine the application dated 4/3/2024 as the 2nd respondent did not file a reference within 14 days upon the delivery of the ruling. That the application offended the mandatory provisions of Rule 11(1) of the [Advocates Remuneration Order](#). The other ground was that the application contravened the mandatory provisions of Order 42, Rule 6(2) of the [Civil Procedure Rules](#) by failing to state that the applicant stands to suffer substantial loss or that he was ready and willing to furnish security hence the orders for stay as untenable.
2. The application was disposed of by way of written submissions. The applicant in its submissions dated 22/3/2024 submitted that the preliminary objection was premised on pure points of law and did not



- delve into contested facts in line with *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696.
3. That this Court lacked jurisdiction to hear the application as the 2nd respondent did not file a reference within 14 days despite the ruling being available. That the 2nd respondent was always aware of the ruling as it was delivered in the presence of all parties and that sufficient reasons were given for taxation. That this Court's jurisdiction was not properly invoked hence the court has no jurisdiction to hear and determine the application dated 4/3/2024 as held in *Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd* (1989) eKLR.
 4. It was further submitted that the procedure for filing a reference was well settled and the 2nd respondent did not have any reason why he did not follow the rules. The applicant relied on *Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR and *National Assembly v. James Njenga Karume* COA Civil Application No. 92 of 1992 (1992) KECA 42 KLR to buttress that position. That the 2nd respondent could not seek solace in Article 159(2)(d) of the *Constitution* as was held in *Raila Odinga v. IEBC & 3 Others 2013* (eKLR) wherein the Supreme Court held that the provision could not be used to circumvent mandatory rules of procedure laid down in statute law.
 5. The applicant also submitted that an order for stay ought not to have been granted as the twin principles under Order 42 Rule 6(2) of the *Civil Procedure Rules* to wit substantial loss and willingness to deposit security were not established. The applicant relied on *Daniel Gicheru Karangu v. Richard Gicheru Irungu* (2015) eKLR. The applicant urged that the 2nd respondent ought to pay costs for the preliminary objection and application.
 6. The 2nd respondent similarly filed submissions dated 19/4/2024. It was submitted that the procedure for filing a reference was provided for under Paragraph 11 of the *Advocates (Remuneration) Order* which required the objector to file a reference within 14 days from the receipt of the reasons. It was however submitted that time only started running once the taxing master served upon an objector reasons for his decision on the objected items.
 7. That the taxing master delivered her ruling on 22/12/2023 and on 2/1/2024, the 2nd respondent filed its notice of objection setting out grounds for such objection. That the 2nd respondent did a follow up vide a letter dated 15/1/2024 requesting the taxing master to outline her reasons for the ruling as the ruling delivered did not indicate the rationale for the findings. That on 8/2/2024 the 2nd respondent sought a clarification on the reasons as per the earlier communication which was un-responded to and also, requested for a mention date.
 8. It was thus submitted that from the foregoing, the time envisioned in Paragraph 11(2) above did not start running due to the failure of the taxing master to act as mandated. That the 2nd respondent had sought for enlargement of time within which to file a reference as time had lapsed between when the ruling was delivered and the filing of chamber summons. That Paragraph 11(2) empowered this court to enlarge time within which a reference could be filed. The 2nd respondent referenced the case of *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* (2013) eKLR to submit that the delay was occasioned by the taxing master's delay and the court's vacation, nevertheless, the 2nd respondent was proactive.
 9. The 2nd respondent also submitted that it was imperative that orders for stay be granted as the applicant had moved to apply for the committal of the 2nd respondent to civil jail over the impugned award and before the reference could be heard and determined thus causing prejudice on him.
 10. I have considered the parties pleadings, evidence and written submissions and will begin by determining the preliminary objection raised, as its outcome is capable of disposing of the suit. A



Preliminary Objection was described in the *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 to mean;

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further Sir Charles Nebbold, JA stated that:-

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

11. A Preliminary Objection raises a pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or if the court is called upon to exercise judicial discretion.

12. In *Oraro v Mbaja* (2005) 1KLR 141, the court held that: -

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

13. The first ground of the preliminary objection is that the application contravened Order 42, Rule 6(2) of the *Civil Procedure Rules* by failing to state that the applicant stands to suffer substantial loss or that he was ready and willing to furnish security hence the orders for stay are untenable. This ground is not preliminary in nature as it requires this court to look into the facts of the case and does not raise a pure point of law. Accordingly, this ground fails the test of a preliminary objection.

14. The second ground is that this court lacks jurisdiction to hear and determine the application dated 4/3/2024. It is trite that without jurisdiction, a court of law cannot purport to entertain any claim. (see *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd.* (1989)).

15. The procedure for filing a reference is provided for under Rule 11 (2) of the *Advocates Remuneration Order* which provides that: -

“ 11. Objection to decision on taxation and appeal to Court of Appeal

(1) Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.

(2) The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.



- (3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
- (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.”
16. It then follows that though there is a prescribed time period within which a reference can be filed, the law envisions a situation where a delay can arise, and proceeds to empower this Court to enlarge time within which such a reference can be filed in accordance to Rule 11 (4) above. Consequently, a delay in filing a reference out of time will not automatically oust the Court's jurisdiction to hear such a reference, unless there is no application to enlarge time filed by the objector.
17. Indeed, the Supreme Court in *Fabim Yasin Twaha v Timamy Issa Abdalla & 2 Others* [2015] eKLR laid down the guiding principles governing extension of time, further buttressing the position that such delay is envisioned by the law, and the same is curable upon application for extension of time and with sufficient explanation for the reasons for delay.
18. On the issue of delay, Mohammed J. (as he then was) held as follows in *George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others* [2014] eKLR held that: -
- “The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”
19. I do note that though the 2nd respondent admits to filing the reference out of time, among the orders sought in the application dated 4/3/2024 is a prayer for extension of time within which to file the reference. Whether or not the reasons given by the 2nd respondent are justifiable so as to allow extension of time is an issue to be determined at the hearing of that application inter parties.
20. However, in the circumstances, it cannot be said that this court lacks jurisdiction to entertain that application whereas Rule 11(4) clearly empowers this court to hear and determine an application for extension of time. It is thus my finding that this Court is clothed with the requisite jurisdiction to hear and determine the application dated 4/3/2024 and exercise its discretion in granting or declining orders extending time within which to file the reference upon hearing the application on merit.
21. The upshot is that the preliminary objection dated 11/3/2024 is hereby found to be unmerited and the same is dismissed. Costs in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED THIS 31ST DAY OF JANUARY 2025

RHODA RUTTO

JUDGE



For Appellant:

For Respondent:

Court Assistant:

