



Lumumba & Lumumba Advocates v Uokoaji Sacco Limited (Miscellaneous Civil Application E156 of 2024) [2025] KEHC 1097 (KLR) (Civ) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1097 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E156 OF 2024**

LP KASSAN, J

FEBRUARY 27, 2025

BETWEEN

LUMUMBA & LUMUMBA ADVOCATES APPLICANT

AND

UOKOAJI SACCO LIMITED RESPONDENT

RULING

1. Before this court is a Chamber Summons dated 28.10.2024 brought under Rule 11 (2) and 11 (4) of the Advocates (Remuneration) Order seeking orders to wit:
 - a. Spent
 - b. Spent
 - c. The Applicant be granted leave to file an objection and a taxation reference to this Honourable Court against the Ruling of the learned Taxing Officer dated 04.10.2024.
 - d. Leave granted in (c) above do operate as stay of execution of the Ruling of the Taxing Officer aforesaid and any other consequential proceedings.
 - e. 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.
 - f. Costs of this application be in the cause.

Applicant's Case

2. The application is supported by the affidavit of Sam Gare, counsel for the Applicant. The Applicant contends that the Taxing Officer delivered a ruling on the Party and Party Bill of Costs dated



29.02.2024, awarding Kshs 3,404,830/= in the absence of the parties. The ruling, initially scheduled for 03.10.2024, was not delivered, and no alternative date was communicated. On 24.10.2024, the Respondent served the Applicant with the Certificate of Taxation. Consequently, the Applicant was unable to file a reference within the prescribed 14 days under Paragraph 11(1) of the Advocates (Remuneration) (Amendment) Order 2014, resulting in a 10-day delay, which is argued to be neither inordinate nor attributable to negligence.

3. The Applicant maintains that a valid agreement on remuneration existed, divesting the Taxing Officer of jurisdiction to tax the bill. It is further asserted that the Taxing Officer misapplied legal principles, leading to findings unsupported by the Advocates (Remuneration) Order. The Applicant argues that without a stay of execution, the Respondent may initiate recovery proceedings, making the reference futile. The court is urged to grant leave and stay orders to preserve the subject matter of the reference, which is said to have high chances of success.

Respondent's Case

4. The Respondent opposes the application through an affidavit sworn on 11.11.2024 by its advocate. The Respondent states that the Advocate/Client Bill of Costs dated 29.02.2024 was amended on 06.03.2024, and after submissions were exchanged, a ruling was reserved for 03.10.2024. However, the court was not sitting on that date, and no directions were posted on the e-filing portal. On 16.10.2024, the Respondent wrote to the Deputy Registrar requesting a ruling date and later discovered the ruling had been uploaded. The Certificate of Costs was subsequently issued on 23.10.2024.
5. The Respondent argues that the Applicant failed to actively follow up on the ruling, unlike the Respondent, who took steps to check the portal. It is contended that the application is a strategy to delay payment of fees and that equitable relief should not be granted to an indolent party. The Respondent submits that Paragraphs 11(1) and 11(2) of the Advocates (Remuneration) Order require an objecting party to notify the Taxing Officer of the items in dispute and obtain reasons for the decision before filing a reference. The Applicant allegedly failed to do so.

Applicant's Submissions

6. The Applicant argues that the Taxing Officer's ruling is manifestly excessive and that the delay in filing the reference was caused by the lack of a ruling notice. The Applicant cites *Nicholas Kiptoo Korir Salat v Independent Electoral and Boundaries Commission & 7 Others*, which outlines principles for extending time, including reasonable explanation for delay and lack of prejudice to the opposing party.
7. It is submitted that a 10-day delay is minor and adequately explained, and that denying the extension would unjustly infringe on the Applicant's right to challenge the ruling. The Applicant further contends that failure to stay execution would render the reference meaningless, as any recovery by the Respondent would frustrate the appeal's purpose.

Respondent's Submissions

8. The Respondent argues that the Applicant's failure to serve a Notice of Objection demonstrates indolence and procedural non-compliance. It is submitted that the Applicant neither filed nor served the notice within the required 14 days, thus disqualifying them from seeking equitable relief. The Respondent asserts that granting leave requires careful assessment of potential prejudice, and the Applicant has failed to establish good faith. The Respondent further argues that the matter has been pending for seven years, and the Applicant's delay has hindered resolution. Accordingly, the Respondent prays for dismissal of the application with costs.



Issues for Determination

- i. Whether the extension of time should be granted?
- ii. Whether execution should be stayed?
- iii. Who should bear the costs?

Analysis and Determination

9. Rule 11 of the Advocates (Remuneration) Order provides a mechanism for challenging a Taxing Officer's decision, allowing an aggrieved party to object within 14 days and seek a judge's review. The court has discretion to extend this period under Rule 11(4) if justified.
10. The ruling in this case was delivered on 04.10.2024, without notice to the parties. The application was filed on 28.10.2024, outside the prescribed timeframe. Given the circumstances, the court finds that the Applicant's explanation for the delay is reasonable, as they were unaware of the ruling's delivery. The delay is not excessive, and no significant prejudice will be suffered by the Respondent, who retains the right to execute should the reference fail. The court is satisfied that sufficient cause has been demonstrated.
11. The Respondent argues that the Applicant did not attach reasons from the Taxing Officer, rendering the application incompetent. However, in *Ahmed Nassir v National Bank of Kenya Ltd* [2006] E.A, the court held that where reasons for taxation are contained in a detailed ruling, seeking further reasons is unnecessary. Upon reviewing the ruling annexed to the Respondent's affidavit, the court finds that the Taxing Officer provided justifications for awarding Kshs 3,404,830/=. The Notice of Objection within the application also outlines the grounds for dispute. Therefore, the application cannot be deemed incompetent solely on this basis.
12. The discretion to grant a stay of execution is governed by Order 42 Rule 6 of the Civil Procedure Rules. In *RWW v EKW* (2019) eKLR, the court stated:

“...an application for stay of execution pending appeal seeks to preserve the subject matter of the dispute to ensure the appeal, if successful, is not rendered nugatory. However, the court must balance this against the rights of a successful litigant to enjoy the fruits of their judgment.”
13. The present application seeks leave to file a taxation reference. In assessing whether to grant a stay, the court must consider whether execution would render the reference nugatory. The court finds that there is a substantive issue for determination by the appellate court. Additionally, the Applicant risks substantial loss if a stay is not granted, as the Respondent could proceed with execution.

Conclusion

14. The court finds merit in the application. Accordingly, the Applicant is granted leave to file a taxation reference out of time against the ruling of the Taxing Officer delivered on 04.10.2024. Prayers (d), (e), and (f) of the application are granted.
15. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF FEBRUARY 2025.

L. KASSAN



JUDGE

In the presence of:-

Oele for Applicant

No appearance for Respondent

Carol - Court Assistant

