



**Wambua v Maweu (Environment & Land Miscellaneous Case
E012 of 2024) [2025] KEELC 2871 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2871 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND MISCELLANEOUS CASE E012 OF 2024**

**EO OBAGA, J
MARCH 27, 2025**

BETWEEN

ALPHONSE NGUNGI WAMBUA APPLICANT

AND

COSMAS MAUNDU MAWEU RESPONDENT

RULING

1. Before this court for determination is the Chamber Summons dated 14th November, 2024 brought under the provisions of Section 1, 1A, 3A, 27 and 95 of the [Civil Procedure Act](#) in addition to Order 50 Rule 5 of the Civil Procedure Rules.
2. The Applicant seeks issuance of the following orders: -
 1. [Spent]
 2. That this Honourable Court be pleased to grant an order of stay of execution of the decree issued on 10th July, 2024 in Makueni MCELC No. E024 of 2023 Alphonse Ngungi Wambua v Cosmas Maweu Maundu pending the hearing and determination of this application.
 3. That this Honourable Court be pleased to grant the Applicant leave to file Reference and/or application challenging costs assessed by the Executive Officer out of time.
 4. That this Honourable Court be pleased to grant any other and or further orders that it may deem fit, just and expedient in the circumstances and in the interest of justice.
 5. That costs be in the cause.
3. The application is based on the grounds appearing on its face together with the supporting affidavit of Alphonse Ngungi Wambua sworn on 14th November, 2024. The Applicant averred that he had sued the Respondent in Makueni MCELC No. E024 of 2023 Alphonse Ngungi Wambua v Cosmas Maweu



- Maundu seeking injunctive orders barring him from trespassing onto the Applicant's parcel of land. That the suit was withdrawn on 30/04/2024 and the Respondent was awarded costs. The Applicant averred that the trial court assessed the costs at Kshs. 223,400/= and a decree was issued to that effect.
4. The Applicant lamented that the costs are grossly exaggerated taking into account the length of time spent in litigating the matter which was withdrawn during the first hearing. He added that the period within which a reference against the costs that were assessed has since lapsed hence the need to obtain leave of this court.
 5. He further contended that his advocates on record were never served with the taxation notice to enable them to object to the bill of costs dated 14/05/2024. The Applicant stated that the application herein has been made without unreasonable delay and that the Respondent does not stand to suffer prejudice if the orders sought are granted.
 6. The Respondent did not file a reply to the application despite there being evidence of service.
 7. The application was disposed of by way of written submissions. In the Applicant's submissions dated 7th February, 2025, Counsel contended that the Applicant stands to suffer substantial loss if the orders sought are not granted because the costs that were assessed are a downright exaggeration considering that the suit was withdrawn during the first hearing.
 8. Citing the provisions of Section 95 of the *Civil Procedure Act* and Order 50 Rule 5 of the Civil Procedure Rules, Counsel submitted that this court has unfettered discretion to grant leave to file a reference. It was contended that the Applicant is an elderly man who could not instruct his advocates to file an objection to the taxation within the timelines specified by law and thus the requirement for leave. Counsel urged the court to grant the orders sought in order to avert an outcome that prejudices the Applicant from the assessment of costs.
 9. Two issues arise for determination in the present application: -
 - i. Whether the Applicant has demonstrated merit in the application for enlargement of time for the filing of a reference against the decree on costs; and
 - ii. Whether the Applicant is entitled to stay of execution of the decree on costs.
 10. The Applicant intends to contest the assessment of the costs ascertained in the certificate of costs dated 17th July, 2024. Costs of the suit were issued pursuant to the decree of the subordinate court dated 30th April, 2024 as per the annexed Exhibit "ANW2". Assessment of costs was done by the Executive Officer of the subordinate court pursuant to the provisions of Order 49 Rule 2 of the Civil Procedure Rules and the provisions of Schedule 7 of the Advocates Remuneration Order.
 11. Being dissatisfied with the outcome of the Executive Officer's assessment of costs, the Applicant ought to have applied to subordinate court under the provisions of Paragraph 68A of the Advocates Remuneration Order which outlines as follows: -
 1. Notwithstanding anything to the contrary in this Order, when the Registrar of the High Court enters final judgment under Order 49, rule 2 of the Civil Procedure Rules (Cap. 21, Sub. Leg.), he may, on application in writing and without the filing or taxation of a bill of costs or of notice to any party, sign a certificate of the costs of the suit calculated in accordance with item 15 of Schedule 6.
 2. An advocate may, in any case in lieu of taxation, apply in writing for a certificate under this paragraph.



3. If the Registrar refuses an application under this paragraph he shall on request certify his refusal in writing to the applicant and the applicant may within fourteen days of receipt of the certificate give notice of objection, whereupon paragraph 11 shall apply.
12. Under the provisions of the Advocates (Remuneration) Order, the court has unfettered discretion on whether to extend time or not. However, that discretion has to be exercised judiciously, and in accordance with the principles set out in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi Civil Application No. Nai 251 of 1997* where 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.”
13. Similarly, in *Mereka & Company Advocates v Kiereini & another (Miscellaneous Application E113 of 2022)* [2023] KEHC 20231 (KLR), the Court stated that: -
- “It is common ground that the Court has discretion under Rule 11(4) of the Advocates Remuneration Order to enlarge time for filing of a reference. The principles to guide courts in considering applications of this nature are well articulated by the Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR where the court stated 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.
14. The present application was filed on 15th November, 2024 whilst the certificate of costs was issued on 17th July, 2024 as shown in Exhibit “ANW2” annexed to the supporting affidavit. The Advocates (Remuneration) Order gives a timeframe of about 28-days from the lodging of a notice of objection with the Taxing officer or the Executive officer and the receipt of reasons for the decision to an Applicant to appeal to this court vide a reference. However, as admitted, the Applicant did not comply with the provisions of Paragraph 11 (1) and (2) of the Advocates (Remuneration) Order.



15. The present application was made about four months after issuance of the certificate of costs. The Applicant attributed the delay in filing of the reference to their old age which hindered issuance of instructions to his Advocates. The Applicant's explanation for the delay in filing the reference is reasonably excusable. That being said, the Applicants are entitled to an order for enlargement of time for the filing of a reference against the Taxing Officer's ruling.

16. In the case of *John Nyariki v British – American Insurance Company (Kenya) Limited* [2015] eKLR, the Court aptly held as follows: -

“There is no express provision that bars a party having a matter in the subordinate court from applying for a certificate under the provisions of Paragraph 68A (2) of the Advocates Remuneration Order. However, bearing in mind that Paragraph 68A(1) of the Advocates Remuneration Order relates to final judgment entered by a Registrar of the High Court, it does appear to this court that the Certificate of Costs issued by the lower court was not that that was envisaged in Paragraph 68A (1) of the Advocates Remuneration Order but rather that that was issued under Schedule VII of the Advocates Remuneration Order...

The proper procedure would have been for the Applicant to have sought intervention of this court if he had been dissatisfied with the magistrate's decision in the subordinate court and for this court to have invoked its inherent jurisdiction as was held in the case of *Angelo Gitonga v Angelo Gitonga & Another* (Supra) in the event the magistrate would have failed to take into account Note 2 of Schedule VII of the Advocates Remuneration Order but only if the same was applicable in the circumstances of the case therein.”

17. On the second issue of stay of execution, in *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.”

18. While observing that the power to order stay of execution of taxed costs is discretionary and that it must be exercised judiciously and in the interest of justice, L. Kimaru J. (as he then was) in *Lucy Wanjiru Kabutha v Jane Muthoni Mucheru* [2006] eKLR, expressed the following views: -

“The applicant is hereby given fourteen (14) days from today's date to file the said reference challenging the taxation by the Deputy Registrar of this court of the respondent's bill of costs and which bill was taxed on the 26th of July 2005. Since the respondent was not at fault, she shall be paid the costs of this application which I assess at Kshs 3,000/= . The said amount shall be paid within fourteen (14) days of today's date. In the interest of justice, I will stay execution of the said taxation by the Deputy Registrar of this court pending the hearing and determination of the reference.”

19. In the end, the Applicant has demonstrated merit in the application which ought to be allowed in the following terms: -



1. An order for enlargement of time be and is hereby granted in favour of the Applicant to file and serve a Reference against the certificate of costs dated 17th July, 2024 issued in Makueni MCELC No. E024 of 2023 Alphonse Ngungi Wambua v Cosmas Maweu Maundu pursuant to the decree dated 30th April, 2024 within 21 days hereof.
2. An order for stay of execution of the certificate of costs dated 17th July, 2024 issued in Makueni MCELC No. E024 of 2023 Alphonse Ngungi Wambua v Cosmas Maweu Maundu pursuant to the decree dated 30th April, 2024 is hereby issued pending the hearing and determination of the intended reference in (1) above.
3. In default of the above orders, execution of the certificate of costs dated 17th July, 2024 issued in Makueni MCELC No. E024 of 2023 Alphonse Ngungi Wambua v Cosmas Maweu Maundu to issue without recourse to this court.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF MARCH, 2025.

In the absence of parties who were aware of the date of delivery.

Court assistant - Steve Musyoki.

