



REPUBLIC OF KENYA



**Odenyo v Ethics & Anti-Corruption Commission (Civil Case
84 of 2016) [2025] KEHC 11532 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11532 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 84 OF 2016

JN MULWA, J

JULY 31, 2025

BETWEEN

RICHARD ODENYO PLAINTIFF

AND

ETHICS & ANTI-CORRUPTION COMMISSION DEFENDANT

RULING

1. Before the Court for determination is the motion dated 23/10/2024 filed by Richard Odenyo (hereafter called the Plaintiff/Applicant) against Ethics & Anti-Corruption Commission (hereafter called the Defendant/Respondent) pursuant to Section 1A, 1B & 3A of the [Civil Procedure Act](#) and Rule 11(4) of the Advocates Remuneration Order (ARO) seeking inter alia:
 - a. Spent
 - b. That the honorable Court be pleased to enlarge time for the Applicant to file a reference out of time.
 - c. Spent.
 - d. That the cost of this application be provided for.
2. The motion is premised on grounds found at the supporting affidavit sworn by the Applicant on even date. The gist of his brief affidavit is that he learnt that a ruling in the matter was delivered on 12/09/2024 and that his former counsel on record failed to attend Court prompting him to appoint his present advocate. He surmises that by the time he accessed the ruling, the 14-days period within which to lodge a reference had since lapsed thus necessitating the instant application.



3. The Respondent opposes the motion by way of a lengthy replying affidavit deposited by Caroline W. Kamau dated 18/11/2024. The nucleus of her response is that this Court reserved a ruling date for the Respondent's bill of costs for 29/08/2024 which notice was duly served upon the Applicant in person, And on 28/08/2024 the firm of M/s Muhatia Pala & Associates Advocates came on record in the matter. However, on 29/08/2024 the taxation ruling was not delivered as the Court was on leave with the same being deferred to 11/10/2024, to wit, she took the liberty of serving the ruling notice upon the Applicant's present counsel on record.
4. Despite being served with the ruling notice, the Applicant's counsel took no steps in the matter save for filing the instant motion more than a month after the taxation ruling was delivered. She takes issue with the Applicant's explanation of mistake of erstwhile counsel by asserting that as at 28/09/2024 the Applicant had duly instructed M/s Muhatia Pala & Associates Advocates therefore equity aids the vigil.
5. The Respondent further deposed that as per the Case Tracking System (CTS) the taxation ruling was delivered on 12/09/2024 yet the Applicant has offered no justifiable reason for failure to attend to the matter. In conclusion she urges this Court to dismiss the motion with costs.
6. In rejoinder by way of a further affidavit dated 19/03/2025, the Applicant asserts that the right to be heard is a constitutional cornerstone to which a party ought not to be punished for mistake of counsel. He further takes issue with the Court's jurisdiction to entertain a bill of costs filed by an employee of a commission whereas Section 4, 5 & 6 of the Advocates Rule bars an advocate from receiving costs when employed. He therefore states that the taxation was incompetent in light of aforesaid practice rules.
7. The motion was canvassed by way of written submissions, which this Court has duly considered alongside the rival affidavit material. Ex facie it is the Court's postulation that the issues for determination concern: -
 - a. Whether the Court ought to enlarge the time within which the Applicant may file its reference?
 - b. Who ought to bear the costs of the motion?

Whether the Court ought to enlarge the time within which the Applicant may file its reference?

8. In presenting the instant motion, the Applicant has relied on among other provision Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court". This Court's inherent powers was judiciously addressed by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR and requires no restatement. Alongside the above, the Applicant has equally cited Paragraph 11(4) of the ARO. Paragraph 11 provides that;-
 - (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.
9. Reasonably, a reference in my view is essentially a form of appeal, challenging the decision of a taxing officer. The applicable principles as may concern the instant motion would thus not be dissimilar to those applicable when seeking leave to appeal out of time and or enlargement of time within which to lodge an appeal.
10. The applicable principles with respect to the latter are settled. It is trite that a successful applicant seeking leave to appeal out of time must demonstrate "good and sufficient cause" for not filing the appeal in time. In *Thuita Mwangi v Kenya Airways* [2003] e KLR, the Court of Appeal while considering Rule 4 of the old Court of Appeal Rules which was in pari materia with Order 50 Rule 6 of the CPR as well as Section 79G of the CPA, reiterated its decision in *Mutiso v Mwangi* [1997] KLR 630 as follows:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this Court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted."

See also: - *Nicholas Kiptoo Korir Arap Salat v IEBC and 7 Others* [2014] eKLR

11. It must be restated that the discretion of the Court in an application of this nature is unfettered, a successful applicant is obligated to adduce material upon which the Court should exercise its discretion, or in other words, the factual basis for the exercise of the Court's discretion in his favor. The circumstances that led to delay in filing the reference have been explained in the Applicant's affidavit with the same being vehemently assailed by the Respondent. A review of the record before this Court, it can be gathered therefrom that the impugned ruling initially slated for 29/08/2024. However, the same was delivered on 12/09/2024 (Annexure RO-1). Whereas it is vividly captured therein that the same was delivered in the absence of the parties. A further review of the record does not reveal whether parties were duly notified of the ruling date on 12/09/2024.
12. While the Applicant's explanation is premised on the fact that failure to attend Court was on account of erstwhile counsel inaction to attend Court, the same would be further from the truth given that on 29/08/2024, the firm of M/s Muhatia Pala & Associates Advocates came on record for the Applicant. Indubitably, as at delivery of the impugned ruling on 12/09/2024, the Applicant was being represented by M/s Muhatia Pala & Associates Advocates. Be that as it may, as earlier noted the impugned ruling was delivered in the absence of all the parties meanwhile there is no indication from the record whether notices were duly issued to either party by this Court.
13. Admittedly, the Applicant indicates that he came to learn about the ruling after 12/09/2024 by which time the 14-day period within which to lodge a reference had lapsed. The Applicant falls short of telling this Court when he and or his counsel on record learnt about the ruling and or when the same was accessed. Adjunctly, no explanation has been offered for the delay in filing the instant motion from the day it was purportedly accessed. That said, it can be observed that the delay between delivery of the ruling and filing the instant motion is more than a month and lacks a sufficient explanation. Makhandia



JA in Patrick Wanyonyi Khaemba v Teachers Service Commission, Board of Management, Kapletingi Mixed Day Secondary School & Francis Tanui [2019] KECA 112 (KLR), while addressing himself to the question of delay observed that; -

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained, hence a plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour.

14. Here, the only saving grace would be the lack of no notices as at when the impugned taxation ruling was to be delivered. However, the explanation advanced by the Applicant is barely convincing. Nevertheless, the delay herein does not appear to be so inordinate. Undoubtedly, it would be a travesty of justice for the Court to drive the Applicant from the seat of justice, for what appears to be partly an omission by both the Court and the Applicant.
15. To that end, the Court is inclined to accord the Applicant the benefit of doubt. Besides, it does not seem that the Respondent will suffer any prejudice that cannot be compensated through costs if the motion is allowed.
16. Concerning the arguability of the intended reference, based on the language employed in Mutiso (supra) the requirement touching on the viability of the intended appeal, is neither mandatory nor sternly applied in an application of this kind. The Court of Appeal in Vishva Stone Suppliers Company Limited v RSR Stone (2006) Limited [2020] eKLR stated that “an arguable appeal need not (be one that will) succeed so long as it raises a bona fide issue for determination by the Court.”
17. With respect to the Applicant’s contestation regarding this Court’s jurisdiction to entertain a bill of costs filed by an employee of a commission, whereas Section 4, 5 & 6 of the Advocates Rules bars an advocate from receiving costs when in employment, in my view the same has been canvassed in the wrong forum. As is, this Court is only concerned with the question of enlargement of time within which to lodge a reference. If the Applicant had an issue with the taxation proceedings, at the onset the same ought to have been canvassed at the appropriate forum and not at this stage wherein leave is being sought to lodge a reference out of time.
18. Having addressed the latter issue, In the circumstances of this case, the Court is hesitantly persuaded that to facilitate the Applicant’s undisputed right of appeal as equally advanced in Vishva (supra), leave ought to be granted to the Applicant to file his reference out of time.
19. The upshot is that the motion dated 23/10/2024 is therefore granted. Leave is granted to the Applicant to file reference within 14 days of delivery of this ruling. The costs of the motion are awarded to the Respondent in any event, and are capped at Kshs. 5,000/-

DELIVERED DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

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JANET MULWA.

JUDGE

