



**Abdalla & 6 others v National Environment Management Authority
& another (Environment and Land Miscellaneous Application
E034 of 2024) [2024] KEELC 7190 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E034 OF 2024
SM KIBUNJA, J
OCTOBER 30, 2024**

BETWEEN

**MOHAMMED AHMED ABDALLA & 6 OTHERS & 6 OTHERS & 6 OTHERS &
6 OTHERS APPLICANT**

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST
RESPONDENT**

KHANSA DEVELOPERS LIMITED 2ND RESPONDENT

RULING

[Notice Of Motion Dated 25Th June 2024 & 2Nd Respondent's Preliminary Objection Dated 26Th June 2024]

1. The applicants moved the court through the application dated the 25th June 2024, seeking for inter alia leave to file a reference against the decision of the National Environment Tribunal decision delivered on 8th April 2024, outside time and stay of execution orders. The application is premised on the eighteen (18) grounds on its face marked (a) to (r) and supported by the affidavit of Mohammed Ahmed Abdalla, the 1st applicant. It is the applicants case inter alia that their counsel was indisposed when the tribunal delivered its ruling on the Party and Party bill of costs on 8th April 2024, and could not file the reference within the 14 days as required; that the 2nd respondent has since extracted the decree, commenced execution by serving a proclamation notice dated 24th June 2024 through Ms. Sure Auctioneers; that their counsel has resumed his duties and the 30 days delay in filing the reference has been explained and is not inordinate; that unless the application is granted, the applicants will suffer irreparable loss, as item was taxed at Kshs.830,073, which is manifestly excessive, and the application should be granted.



2. The 2nd respondent opposed the application through the notice of preliminary objection dated the 26th June 2024, raising two grounds that the application offends paragraph 11(1) and (2) of the Advocates Remuneration Order, 2014 and is therefore novice, premature, a nullity ab initio and an abuse of the court. The 2nd respondent also filed the replying affidavit of Sammy Kamuio Mukuri, director, sworn on 26th June 2024, in opposition to the application, in which he inter alia deposed that there was undue delay as the application was filed two (2) months seventeen (17) days after the NET decision; that no notice of objection was filed within the 14 days as required; the applicants have not shown that they stand to suffer substantial loss if the application is not granted; that suit property was valued Kshs.419,146,750, which value is determinable from the pleadings in High Court Petition. No.16 of 2022 that was subsequently placed before National Environment Tribunal, and therefore the application has no merit.
3. The learned counsel for the applicants and 2nd respondent filed their submissions dated the 6th August 2024 and 15th July 2024 respectively, which the court has considered. I have seen another submission by the 1st respondent filed through J. M. Makau & Co. Advocates dated 20th August 2024 that is in respect of a notice of motion dated 31st May 2024 for review that does not appear to be relevant to the subject matter of this ruling.
4. The following are the issues for the court's determinations on the application and preliminary objection under consideration:
 - a. Whether the 2nd respondent's preliminary objection raises any pure point of law that arises from the uncontested pleadings, and that is capable of determining the application herein.
 - b. Whether the applicants have met the threshold for leave to file a reference outside the statutory time to be granted.
 - c. Who pays the costs?
5. The court has considered the grounds on the application, preliminary objection, affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon, and come to the following findings:
 - a. That it is not disputed that the National Environment Tribunal , NET, delivered its ruling on the Party and Party bill of costs on the 8th April 2024, and no notice of objection and or reference was filed within the 14 days required under paragraph 11 (1) & (2) of the [Advocates Remuneration Order, 2014](#), that required a party who is not satisfied with the decision of the taxing officer to “within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects” and the taxing officer “ forthwith record and forward to the objector the reasons for his decision on those items ..” The applicants are through the instant application seeking for leave to file a reference outside time as the same has long lapsed. They have inter alia submitted that the respondent will not suffer any prejudice as the taxed costs has been deposited in an interest earning account in accordance with the court order on stay of execution; that they have explained the delay, and the 28 days delay is not inordinate; Article 159(2) of [Constitution](#) emphasizes substantial justice over technicalities; and their reference raises triable issues.
 - b. The 2nd respondent opposed the application and among others submitted that paragraph 11(1) and (2) of [Advocates Remuneration Order](#) has not been complied with as applicants have neither filed a notice of objection, nor sought for reasons for taxation from the taxing



officer; that the applicants have not satisfied Order 42 Rule 6(2) of the Civil Procedure Rules on substantial loss and that there was undue delay in filing the application.

- c. As the court has already dealt with the prayer for stay of execution, which was granted on the 25th June 2024, and having confirmed from counsel that the condition thereof has been satisfied, then the issue remaining determination is whether or not to grant the prayer for leave to file the reference outside the time. As I embark in that exercise, it is important to determine first whether the 2nd respondent's preliminary objection raises any pure point of law that can be decided upon without considering evidence. The court has in (2) above summarized the grounds in the preliminary objection as "raising two grounds that the application offends paragraph 11(1) and (2) of the Advocates Remuneration Order, 2014 and is therefore novice, premature, a nullity ab initio and an abuse of the court." These grounds have been opposed and have not clearly emanated from the pleadings filed herein. That as they have been contested, then evidence would require to be taken before the court can make a determination one way or the other. I will therefore take the grounds on the notice of preliminary objection to be part of the 2nd respondent's reply to the applicants application for leave to file the reference out of time.
 - d. The applicants have explained their delay in filing the reference to be the indisposition of their counsel. While that may not necessarily be the case, they moved the court for leave without inordinate delay, and the court has taken note they complied with the condition set for granting the order of stay of execution. There is therefore no risk of the respondent being prejudiced if leave is granted as security for the due performance of the decree in case the applicants are not successful has been secured through the deposit of the whole taxed costs in an interest earning account. The Supreme Court of Kenya in the case of Mombasa County Government versus Kenya Ferry Services & Another [2019] eKLR, discussed what a court should consider in applications for extension of leave and stated inter alia; that extension of time is not a right of a party but an equitable remedy available to deserving party at the discretion of court on a case by case basis; that the party must lay basis to the satisfaction of court that it deserves the order; the delay must be explained to the court's satisfaction; the application has been brought without undue delay; that the respondent is not likely to be prejudiced if the order is issued. Having considered the facts presented by both sides and the applicable law, I find the applicants' application for leave to file the reference has merit. However, as the applicants are wholly to blame for not acting within the 14 days prescribed, they will pay the respondent's costs in the application.
6. Flowing from the conclusions set out above, the court finds and orders as follows:
- a. That the notice of preliminary objection dated the 26th June 2024 has no merit and is rejected.
 - b. That the applicants' notice of motion dated 25th June 2024 has merit and is allowed in the following terms;
 - i. That prayer (4) of the said application is allowed.
 - ii. The reference be filed, and served within the next seven (7) days from today.
 - iii. The applicants to meet the respondent's costs notwithstanding.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 30TH DAY OF OCTOBER 2024.

S. M. KIBUNJA, J.



ELC MOMBASA.

In the presence of:

Applicants : Mr. Girffins Timbe

Respondents : Mr. Makau For 2Nd Respondent

Leakey – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

