



**Concorde Saving & Credit Co-operative Society Limited v Musyoka  
Murambi & Associates Advocates (Miscellaneous Application E843 of 2021)  
[2025] KEHC 9641 (KLR) (Commercial and Tax) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9641 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E843 OF 2021  
DO CHEPKWONY, J  
JUNE 20, 2025**

**BETWEEN**

**CONCORDE SAVING & CREDIT CO-OPERATIVE SOCIETY  
LIMITED ..... APPLICANT**

**AND**

**MUSYOKA MURAMBI & ASSOCIATES ADVOCATES ..... RESPONDENT**

**RULING**

1. For determination before this Court are two applications, one by the Applicant/Advocate dated 20<sup>th</sup> September, 2022 brought pursuant to the provisions of Section 51(2) of the *Advocates Act*, Sections 1A, 1B and 3A, all of the *Civil Procedure Act*, Order 22 Rule 1(b), Order 23 Rule 1 and 2, Order 51 Rule 1 all of the Civil Procedure Rules and all enabling provisions of the law seeking for the following orders; -
  - a. That this Honourable Court be pleased to convert its Certificate of Costs dated 19<sup>th</sup> August, 2022 in the sum of Kenya Shillings Three Hundred and Eighty-Eight Thousand, Five Hundred and Seventy-Six (Kshs.388,576.00) only into a decree and Judgment of this Honourable Court.
  - b. That the decretal sum be paid by the Respondent to the Applicant with interest at the rate of 14% per annum from 28<sup>th</sup> July, 2022 until payment in full.
  - c. That the costs of this application be borne by the Respondent.
2. The application is predicted on the grounds on the its face and supported by the affidavit of Cynthia Omuya sworn on 20<sup>th</sup> September, 2022. In the affidavit, she deposes that she is an associate at M/



- S Musyoka Murambi & Associates, Advocates and that on 12<sup>th</sup> November, 2021, they filed their Advocates Client Bill of Costs dated 12<sup>th</sup> November, 2021.
3. She contends that the ruling on the Advocate/Applicant's Bill of Costs was delivered on 28<sup>th</sup> July, 2022 whereby it was taxed at Kshs. 388,576.00 and a certificate of costs was issued on 19<sup>th</sup> August, 2022. It has been urged that it is in the interest of justice that this application be allowed.
  4. In opposition, the Respondent/Client filed a Replying Affidavit dated 4<sup>th</sup> October, 2022 together with Grounds of Objection dated 5<sup>th</sup> October, 2022. In both the Replying Affidavit and Grounds of Objection, the Respondent states that the application is premature in that the issue of costs has not been settled as there is already in situ a reference that has not been determined. According to the Respondent, the advocate for Applicant is not entitled to interest on the claimed amount for the reason that the principle has not been finally settled. And in any event, there was no compliance on the part of the advocate with the requirements of Rule 7 of the Advocates (Remuneration) Order.
  5. The second application is a Chamber Summons by the Client dated 5<sup>th</sup> October, 2022 brought pursuant to Paragraph 11 of the Advocates (Remuneration) Rules and Order 42 Rule 6 of the Civil Procedure Rules. It is couched in the following manner:-
    - a. Spent;
    - b. Spent;
    - c. That there be an interim order of stay of execution of certificate of costs in this cause pending hearing and determination of the reference herein.
    - d. That this Honourable Court do extend time for filing the reference between the parties hereto.
    - e. That this Honourable Court be pleased to treat or convert this application as a reference.
    - f. That this Honourable Court do review or set aside in its entirety the ruling or certificate of costs of the Taxing Officer granted in this cause on 28<sup>th</sup> July, 2022.
    - g. That this Honourable Court do reverse or and tax off the taxed costs found to be due to the Respondent or alternatively the Bill of Cost dated 12<sup>th</sup> November, 2021 be remitted with appropriate directions for re-taxation by a different Taxing Officer.
    - h. That the application be admitted as a reference against the Taxation proceedings aforesaid.
    - i. That the cost of this application be provided for.
  6. The application is anchored on the grounds on the face of it and supported by the Affidavit of Joseph Njoroge Mbugua and a Supplementary Affidavit by James Odera. In the said affidavit, the deponent avers that on 28<sup>th</sup> July, 2022, the learned Taxing Officer rendered her findings in the presence of the Sacco's counsel in Summary Form and on 29<sup>th</sup> July, 2022, they applied for reasons of her findings. On 22<sup>nd</sup> September, 2022, they sent a reminder to the Court Registry in respect of its application for certified true copies of the ruling. On 30<sup>th</sup> September, 2022, his clerk collected a certified copy of the ruling which had been certified by the court on 23<sup>rd</sup> September, 2022.
  7. The Applicant contends that on 20<sup>th</sup> September, 2022, he received an application by the Respondent dated 20<sup>th</sup> September, 2022 seeking conversion of the ruling into a decree. He deposed that a sum of Kshs. 200,000/= had been paid to the Respondent as deposit for fees and disbursement.
  8. In opposition to the application, the applicant filed a Replying Affidavit dated 26<sup>th</sup> January, 2023 sworn by Joan Wakoli Namuyemba, wherein she deposes that the application is misconceived, bad in law,



and tainted with false statements, only meant to deny the Respondent fair justice as the legal fees for representing the Applicant in HCCA No.301 of 2021 from ruling in the Co-operative Tribunal.

9. She contends that the applicant avers that the Taxing Officer rendered her ruling on 28<sup>th</sup> July, 2022 after which they requested for a copy and reasons of the ruling vide a letter dated 29<sup>th</sup> July, 2022, only for them to receive a copy of certified ruling on 30<sup>th</sup> September, 2022.
10. According to the Respondent, the client has a right to apply for extension of time to file a reference which right should be granted liberally unless the applicant is guilty of unexplained and inordinate delay in seeking indulgence of the court. The Respondent contends that the application is an afterthought as the deponent has not demonstrated any rational, plausible or logical reasons as to warrant an extension of time for filing reference.
11. It is the Respondent's case that the Applicant ought to have filed a reference within 14 days upon the decision of the Taxing Master seeking for an extension of time. To have done the same in sixty-nine (69) days later, amounts to inordinate delay and as such the Respondent/Advocate will be highly prejudiced.
12. On 10<sup>th</sup> November, 2022, this court issued directions that both applications proceed by way of written submissions. Both parties complied and filed their respective submissions which will be considered in the final analysis and determination of the respective applications filed by the parties.

### **Analysis and determination**

13. In considering the two applications, this Court has read through their respective Supporting Affidavits, the responses thereto and the submissions together with the cited authorities filed by either party and finds the following issues condensing for determination:-
  - a. Whether or not the Applicant should be granted an extension of time to file reference?
  - b. Whether the reference application dated 5<sup>th</sup> October, 2022 is merited?
  - c. Whether Judgment should be entered in for the sum of Kshs. 388,576.00 in terms of the Certificate of Costs dated 19<sup>th</sup> August, 2022?
14. On whether or not the Applicant should be granted extension of time to file reference, Paragraph 11(1) and (2) of the Advocates (Remuneration) Order provides for the procedure to be complied with for a party seeking to challenge a decision by a Taxing Officer. The said provision states as follows: -
  - a. 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.
  - b. 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.
15. From the aforementioned provision, it is clear that any party aggrieved by a Taxing Master's decision, has fourteen(14) days to prefer a reference to the High Court. In the instant case, the Taxing master's ruling was delivered on 28<sup>th</sup> July, 2022. It then follows that the objector had upto 18<sup>th</sup> August, 2022 to file the reference. The current application is dated 5<sup>th</sup> October, 2022.



16. Paragraph 11 (4) of the Advocates (Remuneration) Order grants this court jurisdiction and or discretion to extend the time lines provided for challenging the decision of the Taxing officer under Paragraph 11 (1) and (2) of the Advocates (Remuneration) Order. It provides thus:-

“The High Court shall have power in its discretion 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 be so made notwithstanding that the time sought to be extended has expired.”

17. It is important to note that extension of time is a discretionary remedy and not a right of a party. Therefore, a party seeking extension of time has a duty to explain to the satisfaction of the court the reasons for the delay in making such an application.

18. The issue of extension of time was settled in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others (2014) KLR, where the Supreme Court held as follows:-

“... we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. 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;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and,
7. Whether in certain cases, like Election Petitions, public interest should be a consideration for extending time.”

19. This Court has carefully perused the Applicant’s Supporting Affidavit and the further affidavit and noted that vide a letter dated 29<sup>th</sup> July 2022, the Applicant requested for the reasons for the ruling delivered on 28<sup>th</sup> July, 2022. The applicant states that they got a copy of ruling on 30<sup>th</sup> September, 2022. There is no evidence that the Taxing Officer responded to the letter dated 29<sup>th</sup> July, 2022 requesting for the reasons for the taxation.

20. In the absence of evidence providing reasons for the taxation and the 5<sup>th</sup> October, 2022 is deemed as properly filed. Applicant having received a certified copy of the ruling in good time, this court finds that the applicant has made out a case to warrant an extension of time to file the reference. Therefore, the reference application dated



21. The next issue for consideration is whether the Reference application dated 5<sup>th</sup> October, 2022 is merited. In its reference application, the client has challenged Items No. 1 on instruction fees, Item No. 2 on getting up fees and that there was an advance deposit payment of Kshs. 200,000/= to the advocate which ought to have been taxed off.
22. In the instant case, the subject matter of the suit was not ascertained and the Taxing Officer used her discretion to determine instruction fees. In the case of *Joreth Limited v Kigano and Associates* [2002] 1 E.A 92, the Court of Appeal set out the parameters where the value of the subject matter is not ascertainable and stated as follows: -
- “We would at this stage point out that the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings Judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assets such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial Judge and all other relevant circumstances. That is what CK Njai Esq did when he said:
- ‘As we do not know the capital value of the property in dispute; one I believe is left to determine the matter on the general discretion donated to the Taxing Officer to tax a bill, based on the importance of the matter to the parties, complexity and the responsibility placed on shoulders of Counsel.’”
23. It is worthy of note that this Court can only interfere with the exercise of discretion by a Taxing Officer if it is shown that there was an error of principle on the part of the Taxing Officer or that the award is manifestly high or low.
24. In the instant reference, item one on instruction fees was taxed at Kshs. 100,000/= which in my considered view was reasonable fees chargeable, and this Court cannot interfere with the exercise of discretion by the Taxing Officer.
25. The client has also raised an issue that the advocate was paid an advance deposit of Kshs. 200,000/= even before the filing of the Bill of Costs subject of these proceedings. The client has however failed to adduce any evidence in its Supporting Affidavit or further affidavit to the reference application to confirm this claim. In the absence of any documentary evidence showing payment of the sum of Kshs. 200,000/=, this Court is not in a position to make any determination on the advance deposit paid.
26. The Advocates and Client instruction fees are governed by Schedule VI part B of the Advocates Remuneration Order which stipulates that:-
- “As between advocate and client the minimum fee shall be—
- a. the fees prescribed in A above, increased by 50%; or,
- b. the fees ordered by the court, increased by 50%; or”
27. In this Court’s view, the Taxing Officer applied the right schedule in increasing the party and party costs by 50% since the bill of costs relate to advocate and client.



28. The reference application having failed, this Court will proceed to determine the advocate application dated 20<sup>th</sup> September, 2022. Section 51(2) of the *Advocates Act* provides that:-

“The certificate of the Taxing Officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that Judgment be entered for the sum certified to be due with costs.”

29. The Applicant argues that since no successful challenge has been made against the certificate of costs, it should be adopted as Judgment in their favour. The Respondent, on the other hand, contends that a reference challenging the taxed costs has already been filed, and thus, the certificate of costs should not be adopted until the reference is determined.

30. In the case of *Lubulellah & Associates Advocates v N. K. Brothers Limited* [2014] eKLR the Court held thus:-

“The law is very clear that once a taxing master has taxed the costs, issued a Certificate of costs and there is no reference against his ruling or there has been a ruling and a determination made and not set aside and/or altered, no other action would be required from the court save to enter judgment. An applicant is not required to file suit for the recovery of costs.”

31. Based on the foregoing, this Court is satisfied that the Taxing Officer correctly exercised her discretion and applied the correct principles in determining the Bill of Costs. There is therefore no merit in the reference application dated 5<sup>th</sup> October, 2022 and the same is hereby dismissed.

32. The Reference application having failed, the advocates application dated September 20, 2022 is merited and the same is hereby allowed in the terms presented therein.

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 21<sup>ST</sup> DAY OF MAY, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE 2025.**

**F. GIKONYO**

**JUDGE**

