



Humphrey & Company Advocates v Busia Bottlers Limited (Miscellaneous Application E101 of 2023) [2025] KEHC 10026 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E101 OF 2023**

PM MULWA, J

JULY 10, 2025

BETWEEN

HUMPHREY & COMPANY ADVOCATES APPLICANT

AND

BUSIA BOTTLERS LIMITED RESPONDENT

RULING

1. Before this Court is a Chamber Summons application dated 29th May 2024 brought under Rule 10(2) and Rule 11(2) of the *Advocates (Remuneration) (Amendment) Order* 2014 and Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya. The applicant seeks leave to file a reference out of time against the decision of the taxing master rendered on 29th April 2024 dismissing its Bill of Costs. It also seeks that, upon such leave being granted, the reference annexed to the application be deemed duly filed upon payment of the requisite court fees, and the taxing master's ruling be set aside and that the costs of this application be provided for.
2. The reasons are contained on the face of the application and a supporting affidavit of George Mbaye sworn on 29th May 2024. He depones that the delay in filing the reference was occasioned by technical hitches on the e-filing platform. It is contended that the delay was neither deliberate nor inordinate, and that the application has been brought without unreasonable delay. The Applicant avers that unless leave is granted, it stands to suffer substantial loss and injustice by being denied an opportunity to challenge the decision of the Taxing Master.
3. The application is opposed by the respondent through the replying affidavit of Charles Mbingi Wesonga, sworn on 1st October 2024. The respondent asserts that the application is an afterthought, aimed solely at delaying the respondent's enjoyment of the fruits of the taxing master's ruling. It is



deponed that the applicant has not sufficiently explained the duration or nature of the alleged technical issues, and as such, the delay is unjustified and prejudicial.

4. The application was canvassed through written submissions

Analysis and determination

5. I have considered the application before me, the rival submissions by the parties, and the main issue before the court is whether this court should enlarge time to enable the applicant to file an objection and taxation reference.
6. Rule 11 of the *Advocates (Remuneration) Order* provides the legal framework for objecting to decisions on taxation. Sub-rule (4) thereof grants this Court discretion to enlarge the time fixed under sub-rule (1) or (2) even where such time has already lapsed. The rule provides:

“ 11. Objection to decision on taxation and appeal to Court of Appeal

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. ...
3. ...
4. The High Court shall have power in its discretion by order to enlarge time fixed by subparagraph (1) or (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 may be so made notwithstanding that the time sought to be enlarged may have already expired.”

7. Indeed, in exercising its discretion to allow an application seeking extension to file a reference out of time, the Court must be satisfied that the omission to act within the prescribed time was excusable and that sufficient cause has been demonstrated. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR, the Supreme Court laid down guiding principles on extension of time. These include: the length of the delay, the reason for the delay, the degree of prejudice to the other party, and whether the application has been made in good faith.
8. In the present case, the Taxing Master’s ruling was delivered on 29th April 2024. The present application was filed on 29th May 2024, roughly two weeks after the expiry of the 14-day period prescribed by Rule 11(1). The Applicant attributes the delay to technical difficulties on the e-filing portal but has not provided specific details such as the dates and duration of the alleged system outage, or evidence such as screenshots, emails, or error notifications to substantiate the claim.
9. While a delay of two weeks is not inordinate, the absence of a credible and verifiable explanation undermines the Applicant’s claim of good faith. The burden lies with the Applicant to demonstrate “sufficient cause” with evidence, not mere assertions.
10. On whether the Respondent stands to suffer any prejudice if the orders sought are granted, I find that drawn-out litigation increases parties’ costs. It is not enough to say that the Respondent will have an



opportunity to respond to the reference. There is a reason why timelines are provided for, that is to ensure order and convenience in litigation.

11. In the circumstances, this Court finds no merit in the application. The upshot is that the Applicants' Chamber Summons application dated 29th May 2024, is dismissed with costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Mbaye for Applicant

N/A for Respondent

Court Assistant: Carlos

