



**Njeru Nyaga & Co. Advocates LLP v Kiki Investment Limited & 6 others
(Miscellaneous Application E719 of 2022) [2025] KEHC 12759 (KLR)
(Commercial and Tax) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E719 OF 2022
BK NJOROGE, J
SEPTEMBER 18, 2025**

BETWEEN

NJERU NYAGA & CO. ADVOCATES LLP ADVOCATE

AND

KIKI INVESTMENT LIMITED 1ST CLIENT

MBUU HOLDINGS LIMITED 2ND CLIENT

KIRAGU FAMILY HOLDINGS 3RD CLIENT

GEORGE NGURE KARIUKI 4TH CLIENT

PETER J. MWANGI 5TH CLIENT

JOHN K. MBUU 6TH CLIENT

JANE W. MICHUKI 7TH CLIENT

RULING

1. The Applicant filed the Chamber Summons dated 1st August 2024 seeking the following orders;
 - a. The Applicant be granted leave to file reference out of time.
 - b. The decision of the Taxing Officer as evidenced in the ruling delivered on 9th July 2024 with respect to the advocated bill of cost dated 21st June 2022 be set aside and taxed afresh by the court.
 - c. In the alternative, the court be pleased to order that the respondent's bill of costs dated 21st June 2022 be taxed afresh by another taxing master.



- d. The Respondent's application dated 28th July 2023 be determined by a court of competent jurisdiction.
- e. The costs in the application be provided.

Background Facts

2. The Application was supported by the Affidavit of Martin Njeru Nyaga Advocate. He stated that the taxing officer erred in law in finding that there was no instruction issued to the Advocate by the Respondents. Further that the Deputy Registrar had no jurisdiction to determine the Respondent's application dated 28th July 2023 on the issue of retainership.
3. In contrast, the Respondent filed the Replying Affidavit sworn by George Ngure Kariuki on 28th January 2025. It was contended that the Respondents never admitted owing the Advocate any money in relation to Winding Up Cause No. 22 of 2006, as no instructions were ever issued to the Advocate for that matter. They acknowledge that while the Advocate did represent them in other cases, those legal fees were fully settled. The taxing master's finding that no retainer existed in respect of the winding up cause was therefore correct, since there was no evidence of such instructions.
4. Further, the Advocate's Reference challenging the taxing master's decision was filed out of time. They argue that no sufficient reasons have been provided to justify the delay, and therefore, the court should not exercise discretion to grant leave for the late filing.

Issues for determination

5. Having carefully considered the submissions by the parties, the issues for determination are;
 - a. Whether the Applicant deserves to be granted extension of time to file reference against the taxation ruling of 9th July 2024.
 - b. Whether the Taxing Officers Ruling should be set aside.

Analysis

6. The reliefs sought by the Applicant clearly call for the exercise of discretion by this Honourable Court.

Whether the Applicant deserves to be granted an extension of time to file reference against the taxation ruling of 9th July 2024.

7. The relief of extension of time is at the discretion of the Court and not an entitlement of a party. Therefore, a party seeking extension of time is obligated to explain to the Court's satisfaction the reasons for delay.
8. Paragraph 11 (4) of the Advocates (Remuneration) Order grants the Court the jurisdiction to enlarge time to appeal against the decision of the taxing officer and provides as follows;

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. While the Court enjoys wide discretionary powers, it is noted that paragraph 11 (1) (2) of the Advocates Remuneration Order does not spell out the relevant factors that the court should consider when



exercising its discretion on whether or not to extend time. The Court is therefore guided by the following cases. In *Paul Wanjohi Mathenge v Duncan Gichane Mathenge*[2013], the Court of Appeal while referring to other authorities observed; -

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi v Charles Gichina Mwangi* – civil application No Nai 26 of 2004, this court held; -

It has been stated time and again that in an application under rule 4 of the rules the learned single judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd* [2003] KLR 486 in which this court stated;-over the years, the court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* – civil application No Nai 255 of 1997(unreported), the court expressed itself thus; -

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 in general 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 reasons for 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.”

10. It was the Respondent’s position that no reasons have been advanced sufficient to justify the filing of the Reference out of time by the Advocate to allow the court extend leave.
11. The Applicant simply stated that the Court grants them leave to file reference out of time. All that the Applicant deponed is as follows;

“That we filed the reference at the earliest time after receiving the ruling of the Deputy Registrar and hereby submit that this is a case fit for extension of time if at all the application will be deemed filed out of time.”
12. The Ruling by the Deputy Registrar was delivered on 9th July, 2024. This Application was filed on 1st August, 2024. The Application ought to have been filed within 14 days, hence the delay amounts to about 22 days. To this Court such a delay cannot be called unreasonable or inexcusable.
13. In view of the above an extension of time to file the reference out of time is hereby allowed.

Whether the Taxing Officers Ruling should be set aside.

14. The Applicant’s main argument is that the Deputy Registrar had no jurisdiction to try the issue of the retainer. To the Applicant, once the retainer was challenged the Deputy Registrar should have referred this matter to this Court, for hearing and determination. The Applicant relies on the decision



in Hezekiel Oira T/A H. Oira Advocate v Kenya Broadcasting Corporation [2015] eKLR, where the High Court stated as follows:

“In *Mugambi & Company Advocates Vs John Okal Ogwayo & Another* (2013) e KLR where the issue was that there was no advocate/client relationship between the advocate and the clients, and so the advocate was not entitled to costs from the clients that could be taxed, Waweru J held that the taxing officer did not have jurisdiction to hear and determine the client's chamber summons dated 28th February 2011 to strike out the advocates bill of costs because the issue being canvassed in the application was whether or not the advocate was entitled to costs in the first place from the clients. The Learned Judge further state, and I concur thus: The jurisdiction of a taxing officer is provided for in the Advocates Remuneration Order. That jurisdiction is to tax bills of costs in accordance with the applicable schedule of the remuneration order where there is no dispute as to retainer, or where costs have been duly awarded by an order of court. See paragraphs 2,10,13 of the Remuneration Order, where the very fundamental issue whether or not an advocate was duly retained and thus entitled to any costs arises before a taxing officer, that issue ought first to be determined by the court. 2. "court" is defined in Section 2 of the *Advocates Act*, Cap 16 as the High Court. "court" is thus not the taxing officer or Deputy Registrar of the court." a...I am in total agreement that the issue of retainer challenges the taxing officers jurisdiction to tax the bill as he could only tax the bill after determination of whether client/advocate being in existence and which issue could only be determined by the court.”

15. The Respondents maintain that the Deputy Registrar had the necessarily jurisdiction to try the issue of retainer. They rely on the decision of the Court of Appeal in *Wilfred N. Konosi t/a Konosi & Co. Advocai.cs vs. Flamco Limited* which states as follows;

The issue whether an advocate-client relationship exists in taxation of a Bill of Costs between an advocate and his/her client is core. The jurisdiction is conferred on the Taxing Officer by law. It is derived from the *Advocates Act* and the Advocates Remuneration Order. The Taxing Officer sits in taxation as a Judicial Officer. His or her task is to determine legal fees payable for legal services rendered. The jurisdiction cannot arise by implication nor can parties by consent confer it. And inherent jurisdiction cannot be invoked where adequate statutory provision exists. It was held in *Taparn vs Roitei* [1968] EA 618 that inherent jurisdiction should not be invoked where there is specific statutory provision to meet the case. The *Advocates Act* and the Advocates Remuneration Order confer on the Taxing Officer jurisdiction to tax bills of costs between advocates and their clients (as well as between party and party in litigation) so as to determine legal fees for legal services rendered.

The nexus between the advocate and his or her client is the advocate/client relationship which springs from instructions by the client to the advocate. Absent such relationship, the Taxing Officer would be bereft of jurisdiction to tax a bill.

As a Judicial Officer sitting to tax a bill of costs between an advocate and his or her client, a taxing officer must determine the question whether he/she has jurisdiction to tax a Bill if the issue of want of advocate/client relationship is raised. An allegation that the advocate/client relationship does not obtain in taxation of an advocate/client Bill of Costs must be determined at once. The Taxing Officer has jurisdiction to determine that question. A decision in taxation where an advocate/client relationship does not exist is a nullity for want of jurisdiction.”



16. This Court is bound by the decision of the Court of Appeal and finds that the Deputy Registrar was seized of jurisdiction to try the issue of retainer.
17. In this Reference, the Applicant has not furnished the Court with any materials that would lead this Court to depart from the decision of the Deputy Registrar that there was no retainer.
18. In the end the prayers sought in the Reference fail.
19. As to Costs, the Applicant has partly succeeded and partly failed, so the fair order is that let each party bear their own costs.

Determination

20. The Applicant's Chamber Summons dated 1st August 2024 is determined in the following manner;
 - a. The Applicant is granted leave to file the reference out of time.
 - b. Prayers (b), (c), and (d) are hereby dismissed.
 - c. Each party to bear its own costs of the Reference.
21. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 18TH DAY OF SEPTEMBER, 2025.

NJOROGE BENJAMIN. K.

JUDGE

In the presence of: -

Mr. Nyaga for the Advocate/Applicant

Miss Ithondeka for the Client/ for the Respondents

Mr. Wabwire - Court Assistant.

