



**Mbai Waweru Advocates (Formerly B Mbai Associates Advocates) v
Kenyan Alliance Insurance Co Ltd (Miscellaneous Civil Application
380 of 2019) [2023] KEHC 20810 (KLR) (Civ) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20810 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION 380 OF 2019
JN MULWA, J
JULY 25, 2023
IN THE MATTER OF THE ADVOCATES ACT
-AND-
IN THE MATTER OF AN ADVOCATES-CLIENT BILL OF COSTS
-AND-
IN THE MATTER OF A REFERENCE FROM A RULING OF THE TAXING OFFICER
BETWEEN
MBAI WAWERU ADVOCATES (FORMERLY B MBAI ASSOCIATES
ADVOCATES) APPLICANT
AND
KENYAN ALLIANCE INSURANCE CO LTD RESPONDENT

RULING

1. This ruling is in respect to the applicant’s chamber summons dated April 5, 2022 brought pursuant to paragraph 11(2) & 4 of the *Advocates (Remuneration) Order* and article 159 (2) (d) of *the Constitution*. The Applicant seeks the following Orders:
 1. That the decision of the Taxing Officer dated December 21, 2021 on the Bill of Costs dated April 18, 2019 be set aside and the Bill of Costs be placed before a different taxing officer for taxation.
 2. That the applicant be granted an extension of time within which to file this Application and the same be deemed to have been filed in time.



3. That in the alternative to prayer 2, the Honourable Court exercises its inherent jurisdiction and be pleased to re-tax the Bill of Costs dated April 18, 2019 afresh and/or make directions to a fresh taxation.
4. That the costs of this application be provided for.
2. The application is premised on the grounds set out on its face and the supporting affidavit of Kairu Timothy Waweru, an Advocate from the firm Messrs Mbai Waweru Advocates who have the conduct of this matter on behalf of the Applicant.
3. The respondent did not oppose the application or participate in these proceedings.
4. The applicant canvassed the application through written submissions, which the court has duly considered alongside the prayers sought and the grounds in support of the application. In the court's considered view, the only issue that arise for determination is whether the applicant has made out a case for extension of the time within which to file a Reference, herein stated as the Application.
5. The legal framework on extension of time within which to file a reference or objection from a decision of a taxing officer is clearly stipulated under Paragraph 11 of the [Advocates Remuneration Order](#) which provides as follows:
 - “ 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.”
6. The Supreme Court set down the principles for extension of time in the case of [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR as follows:
 - “ 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; ...”
7. On the issue of delay, Mohammed JA. (as he then was) held as follows in [George Kagima Kariuki & 2 Others v George M. Gichimu & 2 others](#) [2014] eKLR: -
- “...The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”
8. In the instant case, the taxing officer gave her Ruling and Reasons for taxation on the Applicant’s Advocate-Client Bill of Costs on December 21, 2021. The Applicant did not file any Notice of objection to the taxation up to March 24, 2022, followed by the instant application on April 5, 2022. It is therefore undisputed that there was a delay of over three months in the filing of both the Notice of Objection and Reference against the taxing officer’s decision.
9. As regards the reasons for the delay in filing the Notice of Objection and Reference, the Applicant simply states that it obtained a copy of the ruling on March 16, 2022 after the legally provided period had lapsed. Notably however, the Applicant has not informed the court whether they experienced any difficulties in obtaining a copy of the said decision within time, which copy was duly typed and signed at date of delivery of the Taxing officer’s ruling. They have also not demonstrated any efforts made towards obtaining the same, if at all. In the premises, the court finds that the delay has not been satisfactorily explained. There are no valid reasons upon which this court can exercise its discretion to extend the time within which to file a Reference in the circumstances of this case.
10. For the foregoing, the court finds that the Applicant’s chamber summons dated April 5, 2022 is devoid of merit. It is hereby dismissed with no orders as to costs since the respondent did not participate in these proceedings.

Orders accordingly.

DATED, DELIVERED AND SIGNED IN NAIROBI THIS 25TH DAY OF JULY 2023.

JANET MULWA

JUDGE

