

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT KERICHO**

**MISCELLANEOUS APPLICATION NO. E001 OF 2025**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**COUNTY PUBLIC SERVICE  
BOARD OF KERICHO..... 1<sup>ST</sup>  
APPLICANT  
COUNTY GOVERNMENT OF KERICHO.....2<sup>ND</sup>  
APPLICANT  
H.E THE GOVERNOR KERICHO.....3<sup>RD</sup>  
APPLICANT**

**VERSUS**

**GORDON OGOLA AND KIPKOECH  
NG'ETICH PATRNERNS  
GORDON OGOLA KIPKOECH &  
CO. ADVOCATES .....  
RESPONDENTS**

**RULING**

**Introduction**

1. The Respondent/Applicant filed a Chamber Summon dated 4<sup>th</sup> July 2025 under Certificate of Urgency seeking the following orders that:

***1. Spent***

***2. The Applicant be granted leave to file an  
Objection and a Taxation Reference to***

***this Honorable Court against the Ruling of the Honorable Court's Taxing Officer delivered on 4<sup>th</sup> June, 2025.***

***3. Leave granted in prayer (2) above do operate as stay of execution of the Ruling of the Taxing Officer aforesaid and the Notice to show cause dated 26/6/2025, as well as any other consequential proceedings.***

***4. The Objection to the Taxing Officer and the Reference annexed hereto be deemed as duly filed and served.***

***5. The costs of this application be in the cause.***

2. The application is expressed to be brought under ***Article 50 and 159 of the Constitution, Order 51 Rule 1 of the Civil Procedure Rules, sections 27 and 89 of the Civil Procedure Act, Paragraph 49 and Schedule 7 of the Advocates Remuneration Order (2014), section 11 (4) of the Advocates Remuneration order and any other enabling provisions of the law.***

**Applicant's supporting affidavit**

3. The application is supported by the affidavit sworn by Caroline Chelangat, the Applicant's County Legal Counsel, dated the same date as the application.
4. The Applicants aver that on 4<sup>th</sup> June 2025, the Taxing Officer issued a ruling taxing the Bill of Costs at Kshs.16,375,662/=.
5. However, the Applicant avers that they were not served with the ruling and were therefore unaware of it, resulting in their absence from court.
6. At the time of delivery, the Applicants aver that their counsel was also unaware of the ruling, which prevented them from filing a reference within the 14-day period prescribed under **Paragraph 11(1) of the Advocates Remuneration Order, 2014**.
7. The Applicants aver that they only learned of the ruling on 30<sup>th</sup> June 2025 upon receiving a certificate of costs and a notice to show cause from the Respondent, by which time the statutory period had lapsed.
8. The Applicants contend that the delay in filing the reference is neither excessive nor unjustified and seek to challenge the Taxing Officer's decision, arguing that the amounts allowed under Items 1 and

3 to 40 are grossly excessive, unlawful, and should be reduced accordingly.

### **Respondent's replying affidavit**

9. In the replying affidavit filed by Renny K. Lang'at on behalf of the Respondents they oppose the Applicants' Chamber Summons for leave to file a reference out of time against the Taxing Officer's ruling dated 4<sup>th</sup> June 2025, which taxed the Bill of Costs at Kshs.16,375,662/=.

10. The Respondent avers that Rule 11(1) of the Advocates Remuneration Order, 2014, which requires any party objecting to a taxing officer's decision to give written notice within fourteen days, and argues that the Applicants failed to comply with this mandatory timeline.

11. The Respondent contends that the Applicants' claim of ignorance of the ruling is unconvincing, especially given that the ruling was uploaded to the Judiciary's Case Tracking System (CTS) on 4<sup>th</sup> July 2025.

12. The Respondent further avers that the application lacks legal merit, was filed with undue delay, and does not meet the conditions for stay of execution, including proof of substantial loss or provision of security.

13. The Respondents urge the court to dismiss the application with costs.
14. Parties canvassed the application by way of written submissions.

### **Applicant's submissions**

15. The Applicants submit that they should be granted leave to file a reference out of time regarding the ruling delivered on 4<sup>th</sup> June 2025 on the Bill of Costs dated 3<sup>rd</sup> February 2025, arguing that they were not served with a notice of the ruling date and were therefore unaware of its delivery. The Applicant submitted that they express dissatisfaction with the Taxing Officer's decision and have attached a draft reference for the court's consideration.
16. The Applicants further submitted that they had actively participated in the proceedings by filing a Replying Affidavit to the Bill of Costs. The Applicants argue that procedural delays should not bar a party from seeking justice, and that the court has discretion to enlarge time to allow necessary steps to be taken. The Applicants relied on **Paragraph 11(4) of the Advocates (Remuneration)** provides as follows:  
***“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. The Applicant also relied on Article 159 of the Constitution, which emphasizes the delivery of justice without undue regard to procedural technicalities and have provided valid reasons for their failure to file an objection within the prescribed timeframe, attributing the delay to circumstances beyond their control. The Applicants now seek leave to file a reference out of time, asserting that the delay is neither excessive nor unjustified, and has been adequately explained to ensure that justice prevails.

18. The Applicants submitted that the decision of the Taxing Master dated 4<sup>th</sup> June 2025 should be set aside, as the taxed amount of Kshs.16,375,662/= is excessively high and burdensome. The taxation process was marred by procedural irregularities, lack of proper notice, and errors of principle, particularly

in the determination and valuation of the subject matter.

19. The Applicant submitted that it is a well-established principle, as held in ***Nanyuki Esso Service V Touring Cars Ltd\** [1972] EA 500**, that an award which is manifestly excessive may indicate an error of principle warranting judicial intervention. Similarly, in ***Elmandry and Others V Salim [1956] EACA 313*** and ***Arthur V Nyeri Electricity [1961] EA 492***, the courts affirmed that errors in principle justify interference, while matters of quantum are generally left to the Taxing Officer unless exceptional circumstances arise. In this case, the Taxing Officer failed to exercise proper discretion.
20. The Applicants therefore urge the court to allow the application as prayed and allow the filing of a reference out of time in the interest of justice.

### **Respondent's submissions**

21. The Respondent submitted that, according to Paragraph 11 of the Advocates Remuneration Order, any party dissatisfied with a taxing officer's decision on a bill of costs must submit a written notice of objection within 14 days of the ruling. The notice is a compulsory procedural step, intended to specify the particular items being challenged and the

grounds for such objections. The Respondent emphasized that the Applicant was obligated to comply with this requirement in order to properly contest the taxation decision. In this case, the Respondent contended that the Applicant did not comply with the stipulated procedure, as they are now requesting permission to file their objection and taxation reference 34 days after the ruling, well beyond the prescribed timeline, amounting to an unjustifiable delay.

22. In the case of ***Twiga Motors Limited V Dalmas Otieno Onyango [2015] KEHC 8106 (KLR)***, the court stated as follows:

***“The time limit in Rule 11 of the Advocates Remuneration Order have been put there for a reason. Failure to adhere to the said timelines would mean that the application would be rendered incompetent in the first instance.”***

23. The Respondent contended that the Applicant attributed the delay in filing the reference to receiving a Notice to Show Cause on 30<sup>th</sup> June 2025. However, the Respondent emphasized that it is the responsibility of litigants to actively monitor their cases, especially through the Judiciary’s Case

Tracking System (CTS), which provides electronic access to court documents and rulings. The ruling in question was uploaded to the CTS on 4th July 2025, and the Applicants could have accessed it earlier had they checked. Therefore, claiming ignorance of the ruling until service of the notice is misleading. Additionally, the Respondent argued that there is no legal provision allowing leave to file a reference out of time to act as a stay of execution. If the Applicants intended to stay execution of the ruling dated 4<sup>th</sup> June 2025, they should have filed a specific application for that purpose. As such, they have not shown any exceptional circumstances justifying the court's discretion to grant leave or stay execution.

24. The Respondent submitted that the law stipulates that a taxing master's decision can only be challenged in exceptional circumstances, specifically where there is an error of principle or the awarded fee is excessively high, as affirmed in ***First American Bank of Kenya Ltd V Gulab P. Shah & 2 others [2002] KEHC 1277 (KLR)***. In this current application, the Respondent submitted the reference is an afterthought aimed at frustrating the Respondents. The Supreme Court of Kenya, in

***Mwicigi & 14 others V Independent Electoral and Boundaries Commission & 5 others***

**[2016] KESC 2 (KLR)**, emphasized the critical role of procedural rules in ensuring justice, noting that procedure is not a mere technicality but integral to fair adjudication.

25. The Respondent relied on **Order 42 Rule 6(2) of the Civil Procedure Rules**, where a stay of execution requires proof of potential substantial loss, prompt filing, and provision of security. In this case, the Applicants have failed to demonstrate how substantial loss would result if execution proceeds. In **Machira t/a Machira & Co. Advocates V East African Standard (No.2) [2002] KLR 63**, the court emphasized that applicants must provide specific details of substantial loss, not mere assertions. Similarly, in **Kenya Shell Ltd V Kibiru [1986] KLR 419**, substantial loss was deemed the cornerstone for granting a stay under **Order 42 Rule 6(2) of the Civil Procedure Rules**, and must be clearly demonstrated. The Respondents argue that the Applicants have failed to show tangible loss, filed the application with a 34-day delay, and have not proposed or deposited any security for due performance. In **Equity Bank Limited V Taiga**

**Adams Company Limited**

**[2006] KEHC 860 (KLR)**, the court held that providing security is a mandatory requirement for a stay.

26. Consequently, the Respondents submitted that the application lacks merit and should be dismissed, with costs awarded to the Applicants at the court's discretion.

**Analysis and determination**

27. The court has considered the application, the replying affidavit, together with the submissions; the issue for determination is whether the application is merited.

28. ***Paragraph 11 of the Advocates'***

***Remuneration Order*** 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."***

29. In ***First American Bank of Kenya Ltd V Gulab P. Shah & 2 others(supra)***, the court stated as follows:

- “(i) the explanation if any for the delay;***  
***(ii) The merits of the contemplated action, whether the matter is arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;***  
***(iii) Whether or not the respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise of discretion in favour of the applicant.”***

30. Paragraph 11 of the Advocates’ Remuneration Order and relevant case law affirm that the court holds discretionary power to grant extensions for filing objections, without being bound by fixed conditions. In the present matter, the ruling issued on 4<sup>th</sup> June 2025 pertains to the Advocate-Client Bill of Costs dated 4<sup>th</sup> April 2025, which itself stems from the judgment delivered by Justice D. Nderitu on 1<sup>st</sup> February 2024.

31. The taxing officer taxed the Advocate-Client Bill of Costs at Kshs.16,375,662/=. The Applicant contends that the advocate in conduct of the matter was unaware of the ruling’s delivery,

whereas the Respondent argues that the Applicant is attempting to lodge an objection 34 days after the judgment was issued which was after the stipulated date.

32. In this instant case, the Applicant is seeking leave to file the Reference, and states if the execution takes place, it will render the Reference nugatory. The Applicant's contention is that when the ruling of the bill of costs was delivered he was not aware and so he could not file the reference within 14 days as specified in paragraph 11(1) of the Advocates Remuneration Order (2014). The court is inclined to oblige the Applicant as the reason given is plausible. Furthermore, the delay in filing the application is not excessive.

33. In ***Ahmed Nassir V National Bank of Kenya Ltd [2006] EA*** where the court held thus: -  
***“Although Rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the Hon. Taxing Officer should do so within 14 days, after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons, where the reasons for the taxation on the disputed***

***items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of Sub-rule (2) of Rule 11 of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.”***

34. The court has discretion to grant a stay of execution as stipulated under ***Order 42 Rule 6(2) of the Civil Procedure Rules***, and in the case of ***RWW V EKW [2019] KEHC 6523 (KLR)***, the court stated as follows:

***“.....an application for stay of execution pending appeal seeks to preserve the subject matter of the dispute to ensure the appeal, if successful, is not rendered nugatory. However, the court must balance this against the rights of a successful litigant to enjoy the fruits of their judgment.”***

35. In view of the foregoing, the court is persuaded to exercise its discretion and enlarge the time to allow

the Applicant leave to file its Reference in objection to the bill of costs.

Since it would be an exercise in futility to grant leave to file the reference and at the same time leave the matter open for execution the court will grant stay of execution of the Ruling of the taxing officer and Notice to Show cause dated 26<sup>th</sup> June 2025.

36. The Applicant is ordered to file the reference within 7 days hereof.

37. Costs of the application to be in the cause

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru this 21<sup>st</sup> Day of November, 2025.**

**ANNA NGIBUINI MWAURE  
JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email.

They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**