

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**[MILIMANI LAW COURTS]**  
**THE CIVIL APPELLATE DIVISION**  
**(Coram: A.C. Mrima, J.)**  
**CIVIL APPEAL NO. E756 OF 2022**

**-between-**

**MOSES ONDERI NAFTAL.....**  
**APPELLANT**

**-versus-**

**UWEZO MICROFINANCE BANK LIMITED.....**  
**RESPONDENT**

**RULING**

1. This is a ruling in respect of two applications, to wit the Notice of Motion dated 3<sup>rd</sup> April 2025 filed by the Appellant and the Chamber Summons dated 2<sup>nd</sup> May 2025 which was filed by the Respondent.
2. The Notice of Motion, on one hand, sought to rectify some errors allegedly contained in a ruling delivered on 4<sup>th</sup> March 2025 in respect of the taxation of the Appellant's Party to Party Bill of Costs dated 12<sup>th</sup> November 2024. On the other hand, the Chamber Summons sought the following orders: -
  - 1) ..... Spent
  - 2) *The court be pleased to grant an order for extension of time in which the Respondent may lodge a Notice of Objection on the taxed Bill of Costs dated 18<sup>th</sup> March 2025.*
  - 3) *In the alternative, the Court be pleased to find that the taxation officer gave reasons for each item taxed in the Ruling dated 4<sup>th</sup> March 2025 and grant an extension of time in which the Respondent to file a Reference.*
  - 4) *The court be pleased to stay the hearing of the Appellant's application dated 3<sup>rd</sup> April 2025 pending the hearing and determination of this application.*

5) *Costs be in the cause.*

3. Given the nature of the applications, this Court directed that both applications be heard together and by way of written submissions. Parties duly complied and filed their respective submissions wherein they set out the correct legal framework for both applications and also referred to several decisions. The gist of the submissions shall be ingrained in the latter part of this ruling.
4. As the Chamber Summons sought *inter alia* to stay the hearing and determination of the Notice of Motion, this Court will, in the first instance, deal with the said Chamber Summons.
5. The Chamber Summons was anchored on the grounds that Learned Counsel, *Nancy Wangaru Migwi*, was not made aware of the delivery of the ruling on the Bill of Costs until when opposing Counsel wrote to propose some rectifications on the said ruling. Counsel posited that the delay in filing an objection was occasioned by the lack of notice of delivery of the ruling and that it was not her fault. She further deposed that the Bill of Costs as taxed was reached upon wrong principles of law and would be prejudicial should it be allowed to stand. She further averred that she would still seek to lodge an objection on the proposed rectified taxed bill of costs. In her supplementary affidavit sworn on 4<sup>th</sup> June 2025, Learned Counsel reiterated that the record was indicative of the fact that the ruling was delivered on 4<sup>th</sup> March 2025 whereas the CTS was indicative that the Ruling was scheduled for ruling on 3<sup>rd</sup> March 2025 and that the changes in the dates was never communicated to the Respondent. Further, Counsel averred that she submitted that the Appellant was entitled to costs of Kshs. 43,700/= and which sums had already been paid to the Appellant. In the end, she reiterated that the application would save judicial time as its determination will address individual concerns raised by both parties.
6. The application was vehemently opposed by the Appellant who filed a Replying Affidavit sworn on 21<sup>st</sup> May 2025 by his Learned

Counsel *Hannah Boyani Nyandwaro*. Counsel averred that the application was an abuse of the Court process and that the Respondent failed to offer any satisfactory explanation for the delay in bringing the Chamber Summons application. She argued that they made the Respondent aware of the Ruling *via* email on 19<sup>th</sup> March 2025 and following their silence, proceeded to file the Notice of Motion with a view to correct some arithmetic errors in the ruling. Learned Counsel also posited that the Chamber Summons was an afterthought and only designed to unnecessarily delay the conclusion of the matter. She further contended that the application did not meet the threshold for extension of time and as such, should be dismissed with costs of Kshs. 30,000/=.

7. On the issue of extension of time, suffice to say that Courts have over time developed legal principles guiding that regime. The Court of Appeal in ***Thuita Mwangi vs. Kenya Airways*** [2003] eKLR stated as follows in respect to the matter: -

*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 generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted."*

8. And, in ***Velji Shahmad vs. Shamji Bros. and Popatlal Karman & Co.*** [1957] EA 438, the High Court expressed itself as follows: -

*In the interests of the public the court ought to take care that appeals are brought before it in proper time and before the proper court or registry and when a judgement has been pronounced and the time for appeal has elapsed without an appeal the successful party has a vested right to the judgement which ought, except under very special circumstances, to be made effectual. And the Legislature intended that appeals from judgements should be brought within the prescribed time and no extension of time should be granted except under very special circumstances.*

9. The guiding law on extension of time was finally settled by the Supreme Court of Kenya in ***Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others*** [2014] eKLR. The Apex Court derived the following underlying principles which a Court should consider: -

- i. 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;*
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;*
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;*
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;*
- vi. Whether the application has been brought without undue delay; and*
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.*

10. Having restated the law, this Court will now apply it to the circumstances of this case. The ruling sought to be appealed against was delivered on 4<sup>th</sup> March 2025 and the Chamber Summons was filed on 2<sup>nd</sup> May 2025. Since *Order 11 Rule 1* of the *Advocates (Remuneration) Order* accords a party 14 days within which to object to a taxing master's decision, the period of delay herein is, therefore, around 46 days. As emphasized in the decisions referred to above, a party seeking extension of time is under an obligation to satisfactorily explain the delay. In this case, the Respondent alleges that the ruling was initially scheduled to be delivered on 3<sup>rd</sup> March 2025, but was rescheduled without notice to the 4<sup>th</sup> March 2025 and subsequently uploaded in the Case Tracking System [CTS] on 7<sup>th</sup> March 2025.

11. The Appellant's Counsel through her disposition went into great length narrating the sequence of events and how each activity was captured in the CTS. The narration and explanation are both

factual and correct. The CTS speaks for itself and the Respondent did not allege that it was not mapped into the case. As such, the Respondent was spontaneously made aware of every activity in the matter through the CTS. On its part, the Respondent did not offer any plausible reason as to why it took 46 days more to challenge the ruling. Further, there was no response to the Appellant's Counsel letter dated 18<sup>th</sup> March 2025 to the Respondent's Counsel on the proposed consensual rectification of errors in the ruling. Even after being formally informed of the ruling, still it took the Respondent such a long time to file the Chamber Summons.

12. Having failed to satisfactorily explain the delay, the Chamber Summons did not attain the legal threshold for extension of time. This Court finds no favour with the Chamber Summons.
13. The Court will now consider the Notice of Motion dated 3<sup>rd</sup> April 2025. The application sought the following orders: -
  - 1) *This Honourable Court be pleased to rectify and/or correct the ruling of the taxing master dated 4<sup>th</sup> March 2025 to the extent that: -*
    - a. *The errors in the computation of the total figure of Kshs.86,420/= awarded be corrected to reflect the accurate sum of Kshs.124,920.*
    - b. *The incorrect date of the Party and Party Bill of costs be amended from 14<sup>th</sup> May 2024 to 12<sup>th</sup> November 2024.*
  - 2) *The costs of this application be provided for.*
  - 3) *The Honourable court do make such further or other orders as may be just and expedient in the circumstances.*
14. The application essentially sought review of the decision of the taxing master on the grounds that there was an error in the computation of the total figure and the date of the Party and Party Bill of costs. *Section 99 of the Civil Procedure Rules and Order 45 Rule of the Civil Procedure Rules* grants this Court the jurisdiction over such an application. This Court has had the

liberty to go through the record and confirmed that there was indeed an error on the taxing master's total computation and the date of the Party and Party Bill of Costs. As such, Notice of Motion is merited. Since the Respondent alleged that it had already paid some costs to the Appellant, such issues can be amicably sorted out between Counsel and the balance, if any, agreed upon.

15. Deriving from the foregoing discussion on both applications, the following final orders hereby issue: -

**[a] The Chamber Summons dated 2<sup>nd</sup> May 2025 is hereby dismissed.**

**[b] The Notice of Motion dated 3<sup>rd</sup> April 2025 is hereby allowed as prayed.**

**[c] Parties shall bear their respective costs.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at NAIROBI this 19<sup>th</sup> day of November, 2025.**

**A.C. MRIMA**

**JUDGE**

**Ruling virtually delivered in the presence of:**

**No appearance for** Learned Counsel for the Appellant.

**Miss Gichuhi**, Learned Counsel for the Respondent.

**Michael/Amina** - Court Assistants.