

the Applicant to pay the costs of the withdrawn suit to the Respondents.

Following that order, the 2nd Respondent filed a party and party bill of costs dated 13th December 2024 in the lower court for taxation. The bill of costs was drawn in the sum of Kshs. 122,900/-. On 22nd January 2025, the lower court assessed the 2nd Respondent's costs as drawn in the sum of Kshs. 122,900/-. The 2nd Respondent thereafter took out warrants of attachment and sale of the Applicant's movable property for the recovery of the said amount. The 2nd Respondent attached the Applicant's movable goods on 10th February 2025 in execution of the said warrants.

What is before the court is the Applicant's Chamber Summons application dated 12th February 2025, seeking a stay of execution of the said warrants of attachment and sale issued on 10th February 2025, extension of time within which to file an objection, and a reference to the taxation of the 2nd Respondent's bill of costs on 22nd January 2025, and an order that the objection and the reference attached to the affidavit in support of the

application be deemed as filed upon payment of the requisite court fees. The Applicant has sought a further order that the ruling of the taxing officer delivered on 22nd January 2025 be set aside and the 2nd Respondent's bill of costs be referred to another taxing officer for a fresh taxation.

The application has been brought on several grounds. The Applicant has contended that the lower court delivered its ruling awarding the Respondents the costs of the lower court suit without notice to the Applicant. The Applicant has contended further that the 2nd Respondent's advocates, who neither entered an appearance nor filed a defence in the lower court matter, filed a bill of costs in the sum of Kshs. 122,900/- for taxation, of which they claimed a sum of Kshs. 90,000/- as instruction fees. The Applicant has averred that the matter never reached the hearing stage, and the 2nd Respondent's advocates attended court only on three occasions. The Applicant has averred that although the bill of costs was served upon its advocates by e-mail, the same went to the said advocates' spam folder and as such was not received by the said advocates on time to be able to attend to the same.

The Applicant has averred that the costs awarded to the 2nd Respondent were excessive and unjustified.

The Applicant's application is opposed by the 2nd Respondent through a replying affidavit of the 2nd Respondent's advocate, Sharon Achieng Omollo sworn on 10th June 2025. The 2nd Respondent has contended that the Applicant's advocates were served with the bill of costs and the notice of taxation and failed to appear in court when the bill of costs came up for taxation. The 2nd Respondent has averred that due to the failure by the Applicant's advocates to attend court for taxation, the 2nd Respondent's bill of costs was taxed as drawn. The 2nd Respondent has averred that the execution commenced against the Applicant for the recovery of the taxed costs is lawful and procedural. The 2nd Respondent has averred that the Applicant has not demonstrated any sufficient cause to warrant the exercise of the court's discretion in its favour.

The application was heard by way of written submissions. The Applicant filed submissions dated 30th July 2025, while the 2nd Respondent filed submissions dated 10th June 2025.

Analysis and Determination

I have considered the Applicant's application, the affidavit filed in support thereof, and the replying affidavit filed in opposition thereto. I have also considered the submissions filed by the advocates for the parties. The only issues arising for determination in the application before the court are whether the court should grant leave to the Applicant to file a notice of objection and a reference out of time against the taxation of the party and party bill of costs by the lower court on 22nd January 2025, and whether the execution commenced by the Respondent for the recovery of the taxed costs should be stayed pending the determination of the reference if the leave sought is granted.

Paragraph 11 of the Advocates Remuneration Order under which the application has been brought provides as follows:

“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) 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 for 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 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."

In Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 Others Supreme Court Application No. 16 of 2014[2014] eKLR, the Supreme Court stated as follows:

"Discretion to extend time is indeed unfettered but it's incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were extenuating circumstances that could enable

the Court to exercise discretion in favour of the applicant. In doing so the following principles are applicable thus:

- (i) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party.**
- (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 ought to exercise 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, which ought to be explained to the satisfaction of the Court.**
- (v) Whether there would be any prejudice suffered, the respondent if the extension was granted.**
- (vi) Whether, the application had been brought without undue delay and**
- (vii) Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”**

In Paul Wanjohi Mathenge v. Duncan Gichane Mathenge [2013] eKLR the Court of Appeal stated as follows on extension of time:

“...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.”

A party approaching the court for an extension of time must demonstrate that it deserves the exercise of the court's discretion. It is common ground that the taxing officer did not deliver any ruling on the 2nd Respondent's bill of costs dated 13th December 2024. When the bill of costs came up for taxation on 22nd January 2025, the Applicant's advocates did not attend court. In the absence of any opposition to the bill of costs, the taxing officer taxed the same as drawn and issued a certificate of costs accordingly. The Applicant has contended that its advocates were not served with the bill of costs and the notice of taxation, and as

such, the taxation of the 2nd Respondent's bill of costs was done without the Applicant having been heard in the matter. The Applicant has contended that it only became aware of the taxation on 10th February 2025 when an attachment was levied against it for the recovery of the taxed costs. The time within which the Applicant was to put in motion the process of challenging the taxation by the taxing officer started running on 22nd January 2025, when the taxation was done. The Applicant was required to file a notice of objection to taxation within 14 days from the date of taxation, and to file a reference subsequently within 14 days of receipt of the reasons for the taxation from the taxing officer. The Applicant did not file an objection to taxation within the prescribed period. The Applicant filed the present application for extension of time to file the objection and a reference on 14th February 2025, 23 days from the date of taxation.

I am satisfied that the application before the court was brought without unreasonable delay. I am, however, not persuaded by the reason given by the Applicant for its failure to file the objection to taxation within the prescribed time. The Applicant has claimed

that the bill of costs and the notice of taxation that were served upon its advocates went to the said advocates' spam folder, and as such were not received by the said advocates until after the taxation. The Applicant has contended that that is the reason why the said advocates did not attend court for the taxation and as such were not aware of the decision of the taxing officer so as to file an objection to the same. I do not think that an advocate's failure to check emails in his spam folder from time to time can excuse his failure to attend court pursuant to the notices served upon him through his nominated e-mail address for service. If such an excuse were to be entertained, then it would completely defeat the purpose for which the Civil Procedure Rules were amended to allow for service by e-mail. It will also roll back the Judiciary's effort to harness technology as an enabler of justice. From a copy of the Applicant's advocate's spam folder annexed to the affidavit in support of the application, I have noted that e-mails from among others, KRA, Homabay High Court, Kisumu Chief Magistrate's court and Oguttu Mboya, Ochwal & Partners Advocates were all directed to the said advocate's spam folder. This is all the more reason why the said advocates have a duty to

check on emails in their spam folder from time to time. The advocates should, in addition, notify their e-mail service providers that such emails are not spam.

I have said enough to show that the fact that the bill of costs and the notice of taxation served upon the Applicant's advocates went to their spam mail was not a sufficient reason for their failure to attend court for the taxation. It follows from that finding that the intended reference does not have good prospects of success. This is because the bill of costs was not opposed and was, for that reason, allowed by the taxing officer as drawn. I am not saying that when a bill of costs is not opposed, it should be taxed as drawn. What I am saying is that the Applicant would have an uphill task persuading this court that the taxing officer erred in taxing a bill that was not contested as drawn.

Since the applicant has not persuaded me that it had a good reason for not filing the notice of objection to taxation and subsequently, the reference within the prescribed period, there is no basis upon which this court can exercise its discretion in favour

of granting the orders sought by the Applicant. I would therefore decline to exercise my discretion in favour of the Applicant.

Conclusion

In conclusion, I find no merit in the Chamber Summons dated 12th February 2025. The same is dismissed with costs to the 2nd Respondent.

**Delivered and signed at Kisumu on this 18th day of
December 2025**

**S. OKONG'O
JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Otieno Obiero for the Applicant

Ms. Omollo Achieng for the Respondent

Ms. J. Omondi-Court Assistant