

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**MISC. APPLICATION NO. E118 OF 2025**

**MGM MUTHU HOTELS ..... APPLICANT**

**VERSUS**

**KAKA KAMAU & CO. ADVOCATES ..... RESPONDENT**

**RULING**

The applicant filed an application dated 13 October 2025 under the provisions of paragraph 11 (4) of the Advocates (Remuneration) Order, Order 51 of the Civil Procedure Rules, and seeking orders that the court be pleased to enlarge the time for filing a Notice of Objection to the taxing officer's decision dated 20 March 2025 in Mombasa ELRC Misc. E057 of 2024. The applicant is also seeking that, upon the enlargement of time, the draft Reference annexed to the Supporting Affidavit be deemed filed and, in the alternative, that the applicant be given 7 days to file the Notice of Objection and Reference.

The applicant further seeks a stay of execution of the Certificate of Taxation/Costs dated 25 April 2025 for Ksh. 4,734,946 and a stay of proceedings upon entry of judgment in Mombasa ELRC Misc. E057 of 2024.

The application is supported by the affidavit of Angela Muhua, the applicant's advocate, who avers that she is the legal officer and is thus authorised to support the instant application. The applicant never conclusively retained the respondent to act for it, and any engagement was conditional upon a fee agreement and management approval, which never materialised. The mere filing of a Memorandum of Appearance and attending a single mention for directions did not establish a concluded retainer. The burden of proving a retainer is on the respondent, who has not been discharged. In the absence of such an agreement, no fees are payable, and the taxation should be set aside. In the alternative, any retainer was limited to the filing of the Memorandum of Appearance and thus cannot justify a full instructions fee.

Ms Muhua avers that the award is excessive for minimal work, as the respondent did not file pleadings. It only filed the Memorandum of Appearance and attended one mention, yet the bill was taxed at Ksh. 4,734,946 by pegging instructions fees on Ksh. 100 million subject value. In **Kenya Airports Authority v Otieno Ragot & Co. Advocates [2024] eKLR**, the court held that instructions fees, including advocate/client fees, must be reasonable and proportionate to the work done. The taxing officer must not apply a mechanical subject matter value. Discretion must be exercised, having regard to the real scope of work.

The taxing officer misdirected herself by treating the pleaded amount as determinative of value while ignoring the minimal input and absence of any pleadings filed by the respondent.

The delay in filing the Notice of Objection and Reference within 14 days was inadvertent and excusable. The applicant was unaware of the ruling delivered on 20 March 2025 and only became aware of it upon the issuance of the Certificate of Taxation on 6 May 2025. The applicant acted diligently and applied on 13 May 2025, seeking an enlargement of time. The 6-week delay was not willful but was due to a genuine lack of knowledge and the absence of notification.

Ms. Muhua avers that the additional delay in finalizing the objection and reference is due to procedural developments and court directives, rather than any indolence on the part of the applicant. An application dated 13 May 2025 was filed seeking an enlargement of time in Mombasa Misc. E057 of 2024, and the court delivered a ruling on 25 September 2025, holding that it was *functus officio*. The applicant applied for review, and the ruling was delivered on 29 September 2025. The application was dismissed.

The time lapse is attributable to procedural developments. In the interests of justice, the applicant should be allowed more time to file its Objection and Reference to this court. The delay is excusable, and under Paragraph 11(4) of the Advocates (Remuneration) Order, the court has discretion to extend time for filing an objection and a reference.

In reply, the respondent filed the Replying Affidavit of Ernest Kaka Kamau, advocate, who avers that the instant application is filed with inordinate delay. Ignorance of the law is no defence. The intended reference to taxation cannot be justified, as they failed to file any objections and petitioned only to contest the instructions.

Kaka avers that the applicant has not given any reasons for failing to attend court when the judgment was delivered. No explanation is given for why the application failed to check the status on CTS, despite being mapped and having access to the records. Thus, the instant application is an afterthought intended to delay the matter.

The applicant is seeking a stay of execution, but the Certificate of Taxation and the decree have not been issued. There is no security offered.

Kaka avers that the main contention is the alleged excessive award of instruction fees. This is a new matter that was not addressed in the Replying Affidavit in response to the Bill of Costs. Such matter cannot be introduced at this stage.

The applicant made a similar application before the Deputy Registrar. They now seek to re-litigate the same matter on the basis of ignorance of the law and procedure. Such is not tenable, and the instant application is without merit and should be dismissed with costs.

### **Determination**

The main issue for determination is whether the court should enlarge time to allow the applicant to file Notice of Objection and Reference following the taxing officer's ruling delivered on 20 March 2025 in Mombasa ELRC Misc. E057 of 2024.

Upon the above determination, the court must address the issues of whether there should be a stay of proceedings and execution of the Certificate of Taxation/Costs dated 25 April 2025 for the sum of Ksh. 4,734,946.

The instant application is premised under the provisions of Paragraph 11 (4) Advocates (Remuneration) Order. These provisions relate to objections to taxing officers' decisions. The court has discretion to take any step (paragraph 2) upon application for such an order, and to order enlargement of time for objections to the taxing officer's decision. See **Jimmy Aggrey Simiyu t/a B.W. Mathenge & Co. Adv v Elizabeth Wanjiru Evans [2019] KEHC 9705 (KLR)**.

The time allowed for filing a reference is 14 days from the time the Taxing Officer gives the reasons for the taxation. Of course, any extension of time is not a right of a party, as held in **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR**.

It is an equitable remedy available only to a deserving party. Any delay should be explained. There must be valid and clear reasons for the court to exercise its discretion to extend the time allowed by law, as held in **Stanley Kahoro Mwangi & 2 Others v Kanyamwi Trading Limited [2015] eKLR**.

The applicant asserts that the delay in filing the Notice of Objection and Reference was due to an inadvertent, excusable error. The applicant was not aware of the ruling delivered on 20 March 2025 and only became aware upon being served with the Certificate of Taxation on 6 May 2025.

No reference was filed with this court within 14 days of 20 March 2025, or immediately upon the applicant becoming aware of the ruling on 6 May 2025. The applicant asserts that an application dated 13 May 2025 was filed before the Taxing Officer, which was dismissed on the grounds that the court was *ex officio*.

Indeed, as submitted by the respondent, ignorance of the law is not a defence. In **Mwanzaka & another (Suing on Behalf of the Estate of Mwanzaka Tindi Dzengo (Deceased)) v Dandasi [2025] KECA 2238 (KLR)**, the court emphasised that mandatory procedures cannot be cured with a plea of ignorance. Indeed, in **Gitungo v Maina [2025] KEHC 18375 (KLR)**, the court held that the plea of ignorance of the law or procedure should not be excusable.

Such a defence of ignorance of the law and procedure cannot stand, especially where counsel represents the applicant and has its legal officer who filed the Supporting Affidavit. The lapse from 20 March 2025 to 13 October 2025, when the instant application is not explained, is unreasonable and unjustified.

The filing of multiple applications before the taxing officer for enlargement of time, for review and then these courts seeking similar orders to enlarge time to file the Objections and Reference is a sheer abuse of the court process.

The application in this regard is without merit.

Given this finding, the question of whether to grant a stay of execution of the Certificate of Taxation/Costs is academic. Such orders have no foundation.

**Application dated 13 October 2025 is hereby dismissed. Costs to the respondent.**

Delivered in open court at Mombasa on this 29th day of January 2026.

M. MBARŪ

JUDGE