



**Subru Motors Limited v Mberia (Suing as the legal representative  
of the Estate of Gibon Gosore Ogechi) & 2 others (Civil Appeal  
E210 of 2020) [2026] KEHC 654 (KLR) (Civ) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 654 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E210 OF 2020  
AC MRIMA, J  
JANUARY 29, 2026**

**BETWEEN**

**SUBRU MOTORS LIMITED ..... APPELLANT**

**AND**

**LINET NEHEMA MBERIA (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF GIBON GOSORE OGECHI) ..... 1<sup>ST</sup> RESPONDENT**

**KEVIN MUCHANGI MBERIA ..... 2<sup>ND</sup> RESPONDENT**

**GICHUKI WINFRED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction:**

1. Before this Court for determination are two competing applications seek diametrically opposite outcomes regarding the taxation of costs in this appeal. The first application is a Notice of Preliminary Objection dated 6<sup>th</sup> May 2025 [hereinafter referred to as ‘the objection’] filed by Linet Nehema Mberia, the 1<sup>st</sup> Respondent herein, seeking to strike out Subru Motors Limited’s, the Appellant herein, Notice of Objection to Taxation and the subsequent Reference for being filed out of time and without leave of the Court.
2. The second application is the Chamber Summons dated 19<sup>th</sup> May 2025 [hereinafter referred to as ‘the Summons’] filed by the Appellant, essentially seeking to cure the defects raised in the objection.



## **Background:**

3. Through an application by way of a Chamber Summons dated 16<sup>th</sup> April 2025, the Appellant sought a stay of execution regarding a Taxation Ruling delivered by the Deputy Registrar on 27<sup>th</sup> March 2025. The Appellant challenged the determination which awarded Kshs 207,324.38/- to the 1<sup>st</sup> Respondent herein. At the heart of the Appellant's case was that the taxing master erroneously based the award on the Advocates Remuneration Order, which it contended was inapplicable because the 1<sup>st</sup> Respondent had acted in person during the proceedings.
4. The application was opposed through the objection. Subsequently, the Summons were filed countering the objection. As said and through the directions of this Court, both the Summons and the objection were heard together, and by way of written submissions, and, are subject of this ruling. Going forward, therefore, a look at the objection and the Summons follows.

## **The Objection:**

5. The objection was tailored in the following manner: -
  1. That the said Notice of Objection to Taxation dated 7<sup>th</sup> April, 2025 and filed on 18<sup>th</sup> April, 2025 and the Taxation Reference are bad in law and incurably defective as they offend the mandatory provisions of Paragraph 11(1) and (2) of The Advocates Remuneration Order, 2014 which states as follows: -
    - i. Paragraph 11(1): "Should any party object to the decision of the taxing officer he may within 14 days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
    - ii. Paragraph 11(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."
  2. That the Appellant's Notice of Objection to Taxation, though dated 7<sup>th</sup> April 2025, was filed on 18<sup>th</sup> April, 2025, out of time and without leave of Court contrary to the provisions of Paragraph 11(1) of the Advocates Remuneration Order, 2014.
  3. That the Notice of Objection to Taxation is therefore incompetent, fatally defective and unlawful.
  4. That the taxing officer has rendered no communication containing his reasons for the impugned taxation as by Law required to enable the Appellant/Applicant invoke the jurisdiction of the Honourable Judge to reconsider any decision on any objected item (s).
  5. That therefore, the Taxation Reference is misconceived and is otherwise an abuse of the process of the court.
  6. That there can be no stay of execution on costs.
  7. That the Appellant's Notice of Objection to Taxation dated 7<sup>th</sup> April, 2025 and Taxation Reference dated 16<sup>th</sup> April 2025 both filed on 18<sup>th</sup> April, 2025 should be struck out with costs to the 1<sup>st</sup> Respondent.



### **The Submissions:**

6. The 1<sup>st</sup> Respondent urged its case further through written submissions dated 27<sup>th</sup> June 2025. In a bid to demonstrate the defectiveness of the Appellant's Chamber summons dated 16<sup>th</sup> April 2025, she contended that despite the Respondents dating their documents 7<sup>th</sup> April and 16<sup>th</sup> April 2025, the Judiciary E-Filing System records indicated they were uploaded and paid for on 18<sup>th</sup> April 2025. She argued that since the Taxation Ruling was delivered on 27<sup>th</sup> March 2025, the Appellant deliberately backdated the documents to evade the requirement of seeking an extension of time under Paragraph 11(4) of the Order, rendering the filings out of time and without the necessary leave of the court. Relying on the case of *Multiline Motors (Kenya) Ltd -vs- Migori County Government* [2021] eKLR, the 1<sup>st</sup> Respondent submitted that an application filed outside the fourteen-day window is incompetent.
7. The 1<sup>st</sup> Respondent further argued that the Taxation Reference was premature and an abuse of the Court process because the Taxing Officer had not yet recorded or forwarded the reasons for the taxation decision as required by law. To that end, reference was made to case of *Evans Thiga Gaturu, Advocate -vs- Kenya Commercial Bank Limited* [2012] eKLR to advance the argument that even if reasons are not indicated on the face of the ruling, the Applicant has a duty to notify the taxing officer to provide them, and that the Court cannot make an informed decision on the objection without them.
8. In conclusion, the 1<sup>st</sup> Respondent submitted that the Appellant's filings were irregular and incompetent, and ought to be struck out. She urged this Court to strike out the Summons with costs.

### **The Summons:**

9. As pointed above, in response to the objection, the Appellant filed the Summons which was supported by the Affidavit of Martin Kuruga, deposed to on a similar date. The Summons sought the following reliefs: -
  - i. Spent.
  - ii. That the Honourable Court be pleased to grant leave to the Appellant to file and/or adopt the Notice of Objection dated 7<sup>th</sup> April 2015 and Chamber Summons reference application dated 16<sup>th</sup> April 2025 out of time.
  - iii. That the Notice of Objection dated 7<sup>th</sup> April 2015 and Chamber Summons reference application dated 16<sup>th</sup> April 2025 be deemed as having been duly filed and served.
  - iv. The costs of the application be provided for.
10. In the grounds and affidavit in support of the Summons, the Appellant asserted that its case revolved around the technical inadvertence regarding the e-filing system and substantive legal challenges to the taxation award. It was posited that upon delivery of the Taxation ruling, it was aggrieved and attempted to file a Notice of Objection on 8<sup>th</sup> April 2025 and upon uploading the Notice, the system indicated the document was 'not payable'. It claimed that it honestly believed the filing was complete within the statutory 14-day period. However, it claimed that on 18<sup>th</sup> April 2025, when the firm attempted to file the Chamber Summons Reference it realized the initial Notice was 'hanging in the system' due to an unpaid fee of Kshs. 100/-.
11. The Appellant described the above oversight as a genuine mistake on the part of the Counsel on record. It referred to a printout of the Judiciary e-portal, which he claimed demonstrated that once the missing fee was paid, the system updated the lodging date to 18<sup>th</sup> April 2025. He argued that the mistake created



the erroneous impression that the Notice and the Reference were filed simultaneously, whereas the intention had been to file the Notice earlier.

12. In further mitigation of the delay, it was deposed that although the ruling was delivered in March, the typed Ruling was not uploaded to the portal for perusal until 8<sup>th</sup> May 2025. He contended that the delay between the ruling date and the 18<sup>th</sup> April 2025 filing was only 21 days, which he described as not unreasonable.
13. As regards the substantive issues raised in the Notice of Objection and the Cahmber Summons, the Appellant argued that the Taxing Master erred in awarding costs based on the Advocates Remuneration Order because the 1<sup>st</sup> Respondent had acted in person, rendering the Order inapplicable.

### **The Submissions**

14. In its submissions dated 19<sup>th</sup> May 2025, the Appellant submitted that the delay in filing was neither inordinate nor intentional, but rather the result of an inadvertent error and system issues. It drew support from the decision in *Joe N. Mwanthi & Co. Advocates v Neema Trust Company Limited* [2021] eKLR, where the Court held that to err is human and accepted a genuine inadvertent error as a valid explanation for delay. The Appellant further cited *Stanley Kahoro Mwangi & 2 Others -vs- Kanyamwi Trading Company Limited* [2015] eKLR, which established that a plausible and satisfactory explanation for delay is the key that unlocks the Court's flow of discretionary favour. The Appellant also invoked the Supreme Court's guidance in *Fahim Yasin Twaha -vs- Timamy Issa Abdalla & 2 Others* [2015] eKLR, which laid out the principles for extending time.
15. As regards the mistake on the part of its Counsel, the Appellant argued that the mistake of their Counsel regarding the system payment should not be visited upon the client. Relying on *Mulu Mbuvi -vs- Carolyn K Mumbo & Co Advocates* [2020] eKLR, it was its case that the primary duty of the Court is to ensure justice is served and that technical lapses by Counsel should not deny a litigant their right to be heard, especially when the Respondent can be compensated by costs.
16. The Appellant contended that the intended Reference raised weighty and arguable issues that merited judicial scrutiny. It relied on *Randolph M. Tindika t/a Tindika & Company, Advocates -vs- Luka Mwambaga Msagha* [2018] eKLR, arguing that failing to grant leave could result in the Respondent receiving a financial benefit (unjust enrichment) to which they were not entitled.
17. The Appellant concluded that it had demonstrated a genuine cause for delay and raised substantial issues regarding the taxation. They prayed for the dismissal of the objection with costs and that the application for leave to file out of time be allowed and deem the filed documents as properly on record.

### **The 1<sup>st</sup> Respondent's Response to the Summons:**

18. In a Replying Affidavit sworn on 3<sup>rd</sup> June 2025, the 1<sup>st</sup> Respondent vehemently opposed the Summons. She claimed that it was an afterthought and an abuse of the Court process which application was only instigated by her objection.
19. She pointed out that the ruling on costs was delivered on 27<sup>th</sup> March 2025, in the presence of the Appellant's Counsel, yet the Appellant took no corrective action until after her Advocates had already filed submissions on the objection pursuant to this Court's directions issued on 7<sup>th</sup> May 2025. She argued that without her objection, the Appellant would not have sought the Court's leave to admit the Notice of Objection and Reference out of time. She deposed further that the Appellant's sudden



procedural manoeuvres were triggered by her specific request for a Certificate of Taxation, which she lodged on April 4, 2025.

20. It was also her position that even as a layperson, she understood that filing processes in the electronic system were only complete upon the payment of the requisite fees and as such the Appellant's failure to pay was not a mere oversight. Finally, on the veracity of the Appellant's claim that the delay resulted from a genuine mistake, she stated that the Appellant was being less than candid. She argued that if the error regarding the unpaid fees had been genuinely realized on 18<sup>th</sup> April 2025, Counsel ought to have taken immediate steps to rectify the position rather than proceeding as if the documents had been filed timeously.

### **The Submissions**

21. In her written submissions dated 27<sup>th</sup> June 2025, the Appellant reiterated her case claiming that the e-filing system was efficient and that the Appellant provided no proof of the alleged error. It was her case that the Appellant's Counsel attempted to deceive the Court by proceeding as though the documents were filed on time, rather than seeking leave immediately, a conduct she described as a deliberate act of deception rather than a genuine mistake.
22. Finally, the Respondent argued that the Appellant did not deserve the equitable remedy of extension of time because they approached the Court with unclean hands. She submitted that the Appellant failed to satisfy the burden of explaining the delay and that granting the order would prejudice the Respondent, who had already commenced execution.
23. In the end, the Appellant submitted that, in the alternative, if the Court were inclined to grant the Summons, then the Appellant should be ordered to deposit the full assessed costs of Kshs. 207,324.38 in Court as security.

### **Analysis:**

24. Having appreciated the respective parties' cases, the submissions and the decisions relied upon, the issues that emerge for determination are as follows: -
  - i. Whether the Objection raises a pure point of law capable of disposing of the matter.
  - ii. Depending on (i) above, whether the Summons be allowed.
25. The Court will now deal with the issues in seriatim.

#### **(a) Whether the Objection raises a pure point of law:**

26. The objection is founded on the limitation of time. The locus classicus on preliminary objections is *Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd* [1969] EA 696 where it was observed that: -

...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration....

27. While limitation of time is a jurisdictional issue that can be raised as a preliminary objection, the Appellant herein has countered it with a substantive application for extension of time, relying on factual explanations to justify the delay.



28. To determine whether the Appellant's Chamber Summons dated 16<sup>th</sup> April 2025 should be struck out, this Court must necessarily interrogate the facts surrounding the delay. That moves the dispute from the realm of a pure preliminary objection into a substantive determination of whether leave should be granted. Consequently, the fate of the objection is inextricably tied to the success or failure of the Appellant's Summons for extension of time. If the Court grants leave, the defect complained of in the objection is cured.
29. This Court, therefore, finds that the objection is caught up with the need to interrogate the facts surrounding the delay and as such the objection transcends the borders of a preliminary objection.

**(b) Whether the Summons be allowed:**

30. The timeline within which a party must file a reference to the High Court is provided for in paragraph 11(1) of the Advocates (Remuneration) Order 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.
31. Paragraph 11(4) of the Advocates (Remuneration) Order expressly grants the High Court power to enlarge the time fixed for filing an objection or reference, even after the time prescribed in paragraph 11(1) has expired. It provides thus;
  2. 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.
32. The power donated to the Court by the above provision is discretionary. In exercising such discretion, a Court is guided by the principles enunciated by the Supreme Court in the case of County Executive of Kisumu -vs- County Government of Kisumu and 8 Others [2017] eKLR where the Learned Judges referred to their earlier decision in the Nick Salat case and observed thus;
  23. It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as "the under-lying principles that a Court should consider in exercise of such discretion:
    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; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

33. Reverting to the circumstances of the case, it is common ground that the Taxation Ruling was delivered on 27<sup>th</sup> March 2025. The 14-day period for the filing of the Notice of Objection lapsed around 10<sup>th</sup> April 2025. The Appellant paid the fees and filed the documents on 18<sup>th</sup> April 2025. The delay is approximately 8 days. That period of delay, by any standard, is not inordinate. However, turning to the reason for the delay, the Appellant asserted a ‘system error’ where the Judiciary e-portal showed ‘not payable’. The 1<sup>st</sup> Respondent vigorously disputed this, arguing the system always shows fees.

34. While the Appellant’s explanation suggested negligence on the part of its Counsel in failing to verify that the filing was complete, this Court will pay homage to the settled principle that the mistake of Counsel should not generally be visited upon the client, provided it is not a dilatory tactic. The foregoing was an observation by the Court of Appeal in Philip Keipto Chemwolo & another -vs- Augustine Kubende [1986] KECA 87 (KLR) when Apoloo, J.A. observed as follows: -

... But Counsel seems to think the defendants are deserving of punishment and must be shut out for their negligence.

I think a distinguished equity judge has said:

Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.

I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The Court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline. In this case, the Appellants offered to pay the costs.

35. In a more elaborate fashion, the Court of Appeal, in the case of Belinda Murai & 9 others -vs- Amos Wainaina [1979] KECA 25 (KLR) discussed the significance of prioritising interest of justice in the face of a mistake, a situation which the Learned Judges acknowledged did not only afflict Advocates, but also Judges and Courts generally. It was observed;

.... A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It is no less pardonable because it is committed by senior counsel though in the case of a junior counsel the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate. It is known that courts of justice themselves make mistakes which is politely referred to as erring in their interpretation of laws and adoption of a legal point of view which courts of appeal sometimes overrule. It is also not unknown for a final court of appeal to reverse itself when wisdom accumulated over the course of the years since the decision was delivered so requires. It is all done in the interests of justice.



36. Returning to the instant case, the unpaid fee was a nominal Kshs 100/-. It is unlikely that the Appellant wilfully withheld it to delay the process. This Court is inclined to accept that this was a genuine, albeit negligent, mistake. Turning on to the 1<sup>st</sup> Respondent's claim in respect to the prejudice by the delay in executing her costs, it is this Court's assessment that it can be cured by an award of costs.
37. This Court must balance the substantive issues of law raised in the intended Reference namely; whether the 1<sup>st</sup> Respondent, having acted in person, was erroneously awarded costs under the Advocates Remuneration Order. It is a question that goes to the legality of the taxation process itself. Shutting out a litigant on a substantial legal question due to an 8-day delay caused by a technical lapse would not serve the interests of substantive justice.
38. However, this Court notes the valid concern of the 1<sup>st</sup> Respondent regarding the Appellant's conduct that filing documents out of time without leave and only seeking to regularize them after a Preliminary Objection is filed is a sloppy practice. While this Court will grant the extension, the Appellant must bear some costs on the Summons.

### **Disposition**

39. Cumulatively, the interests of justice favour hearing the Reference on merit rather than striking it out on a procedural lapse, given the short delay and the weight of the substantive issue raised. Accordingly, the objection is disallowed, but the Summons is allowed.
40. Consequently, the following final orders hereby issue: -
  - (a) The Notice of Preliminary Objection dated 6<sup>th</sup> May 2025 is hereby disallowed and the Chamber Summons dated 19<sup>th</sup> May 2025 succeeds.
  - (b) The Notice of Objection dated 7<sup>th</sup> April 2025 and the Chamber Summons Reference dated 16<sup>th</sup> April 2025 are hereby deemed as duly filed and served.
  - (c) The Appellant shall pay the 1<sup>st</sup> Respondent costs assessed at Kshs. 15,000/- [Fifteen Thousand Only] within 14 days hereof and in default execution shall issue.
  - (d) The Reference shall be set down for directions on a date to issue.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JANUARY, 2026.**

**A. C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Mr. Mbichire, Learned Counsel for the Appellant.

Miss Ndinda, Learned Counsel for the 1<sup>st</sup> Respondent.

Michael/Amina – Court Assistants.

