



**Acorn Law Advocates LLP v Development Bank of Kenya Limited (Miscellaneous Cause E109 of 2024) [2026] KEHC 1172 (KLR) (Commercial and Tax) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1172 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CAUSE E109 OF 2024  
F GIKONYO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**ACORN LAW ADVOCATES LLP ..... ADVOCATE**

**AND**

**DEVELOPMENT BANK OF KENYA LIMITED ..... CLIENT**

**RULING**

1. There are two applications before the court; one filed by the client and the other by advocate.

**Client's application**

2. Through a chamber summons dated 19.1.2025, the client seeks enlargement of time to file its reference out of time and the setting aside of the taxing officer's ruling delivered on 18.12.2024. The application is made primarily under Rules 11(1) and (2) of the Advocates Remuneration (Amendment) Order (ARO) 2014.
3. The application is supported by the affidavit sworn by the client's head of legal, Yvonne Masinde, on 19.1.2025. The main grounds are that the taxing officer failed to consider and determine the major issue raised by the client in the replying affidavit; to wit, whether the client had instructed the advocate challenging the very foundations of the bill-existence of advocate-client relationship.
4. The application is opposed by the respondent through a replying affidavit sworn by Dr. Robert Omondi Owino on 27.1.2025. The core contentions are that the reference has not been filed within the statutory timelines and that the client did not file a notice of objection against the taxation ruling.



## Advocate's application

5. The advocate's application is the notice of motion dated 22.1.2025 brought under section 51 (2) of the *Advocates Act* seeking entry of judgment for the taxed costs of Kshs. 2,559,250/-.
6. The application is supported by the affidavit sworn by Dr. Robert Omondi Owino on 22.1.2025.

## Submissions

7. The applications were canvassed through written submissions. The client filed written submissions dated 18.3.2025.
8. The client urged the court to set aside the impugned decision, to dismiss the advocate's bill of costs dated 8.2.2024 with costs.
9. The client submitted that the advocate has not laid out a sound legal and factual basis for the grant of the amount claimed. It relied on Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited [2017] eKLR to argue that the existence of an advocate-client relationship is central as it gives jurisdiction to the taxing officer to entertain the bill of costs. It also relied on para.s 2, 10 and 13 of the Advocates Remuneration Order and sections 2 and 44 of the *Advocates Act*.
10. The client asserted that the taxing officer's jurisdiction is to tax bills of costs where there is no dispute as to retainer and that it is the court that has the jurisdiction where there is an issue raised regarding retainer.
11. The client relied on Omulele & Tollo Advocates v Mount Holdings Ltd [2016] eKLR to argue that where a retainer is denied, the burden falls on the advocate to prove the retainer on a balance of probabilities.
12. The advocate filed written submissions dated 10<sup>th</sup> and 27<sup>th</sup> March 2025. The former was in opposition to the client's application and the latter in support of his application. He urged the court to strike out and dismiss the client's application as it is defective, incompetent, and undeserving of the court's discretion.
13. The advocate asserted that the client's application has been filed outside the statutory timeframe. Opposing the enlargement of time, the advocate argued that the client has not given a satisfactory explanation for the delay. He relied on Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR on the guiding principles and Njoroge v Kimani (2022) KECA 1188 (KLR), the Court of Appeal held that an applicant must provide a satisfactory explanation for each period of delay and that condonation cannot be granted for the mere asking.
14. The advocate argued that the client failed to file a notice of objection, as required. In support, he relied on Machira & Co. Advocates v Arthur K. Magugu & Another [2012] eKLR and Aoro v Were (2022) KEHC 14628 (KLR).
15. The advocate further argued that without a written objection and written reasons, no competent reference lies before the Court. He relied on Postal Corporation of Kenya v Donald Kipkorir & Others and Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd (2) (2006) EA 5.
16. The advocate relied on Mwicigi & 14 Others v IEBC & 5 Others (2016) KESC 2 (KLR), where the Supreme Court emphasized that procedure is the handmaiden of justice and where procedural requirements bearing on just determination are overlooked, pleadings may be declared incompetent.



17. The advocate argued that Section 3A of the *Civil Procedure Act* and constitutional jurisdiction cannot be used to circumvent Rule 11 of the ARO. He also argued that *the Constitution* should not be invoked to settle everyday litigation.
18. The advocate relied on *Machira & Co. Advocates v Arthur Magugu & Another*, HCC Misc Appl No. 358 of 2021 [2002] 2 EA 428 (CCK), to propound that the ARO is a complete code and does not provide for appeals from a taxing master's decision; a position approved by the Court of Appeal in *Machira & Company Advocates v Arthur K. Magugu & Another* [2012] eKLR. He also relied on the Court of Appeal decisions in *Mayers & Another v Akira Ranch Ltd (No. 2)* [1972] EA 347, *Chatur Radio Service v Pronogram Ltd* [1994] eKLR, and *Taparu v Roitei* [1968] EA 618 to the effect that inherent jurisdiction cannot be invoked where a statutory procedure exists or to defeat express statutory provisions.
19. Finally, the advocate contended that there cannot be a stay of execution or other relief in the absence of compliance with Rule 11. The advocate relied on *George S. Onyango OGW v Board of Directors of Numerical Machining Complex Ltd* [2014] KLR, where the court held that where legislation regulates a right, that legislation becomes the primary means of enforcement, and constitutional jurisdiction should not be used to bypass statutory mechanisms.

## **Analysis and Determination**

### **Enlargement of time**

20. The request for extension of time is sine qua non determination of the intended reference.
21. Extension of time is an equitable and discretionary remedy 'only available to deserving party' who has explained the delay to the satisfaction of the court. The court will also consider; 'Whether there will be any prejudice suffered by the respondents if the extension is granted; and whether the application has been brought without undue delay.' *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others (Sup. Ct Application No. 16 of 2014)* [2014] eKLR.
22. The advocate argued that the client's application fails to comply with the mandatory requirements of Rules 11 (1) and (2) of the Advocates Remuneration Order (ARO). Yet, the client did not disclose why it did not challenge the taxation ruling within 14 days from the delivery of the taxation ruling, 18.12.2024 when time began to run. It highlighted that the ruling was uploaded on CTS on 19.12.2024.
23. The client submitted that the application was filed timeously in the circumstances as by the time the ruling was uploaded on CTS, its advocates had already closed their offices.
24. Para. 11 (1) and 2 of the Advocates Remuneration Order, 2014 provide that: -
  - (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."
25. The reference application is dated 19.1.2025, filed on 20.1.2025, against the taxation ruling delivered on 18.12.2024. This is a period of 31 days from 19.12.2024.



26. The client ought to have filed the application 14 days from the ruling. Time is calculated from the day after the ruling was delivered, 19.12.2024. 14 days thereafter fell on 1.1.2025. Under section 57 (b) of the *Interpretation and General Provisions Act*, where the last day falls on a public holiday, time extends to the next working day. Therefore, the deadline was 2.1.2025.
27. The application was filed on 20.1.2025, about 18 days after the deadline. I find that the delay was not inordinate.
28. The explanation for the delay is what unlocks the flow of the court's discretion. Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] KECA 701 (KLR)
29. I think that the client has given a plausible explanation for the delay, considering that under Order 50 Rule 4 of the Civil Procedure Rules "...the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time..."
30. I also find that the advocate will not suffer substantial prejudice if the prayer for enlargement of time is granted as he will have an opportunity to be heard.
31. Therefore, the prayer for enlargement of time is granted.

#### **Notice of objection**

32. The advocate faulted the client for not filing a notice of objection against the taxation ruling. It contended that a party who has not objected to taxation cannot purport to file a reference. It relied on Machira & Company Advocates v Arthur K. Magugu & Another [2012] eKLR and Aoro Were (Miscellaneous Reference Application E019 of 2022) [2022] KEHC.
33. The impugned ruling contains reasons. Courts have held that if a taxation ruling contains reasons within it, there is no need to file a notice of objection. A M Kimani Co Advocates v Trident Insurance Co Limited 2016 KEHC 7549 (KLR) and Postal Corporation of Kenya v Donald Kipkorir & Others [supra].

#### **Error of principle on Jurisdiction**

34. The client has challenged the taxation ruling based on lack of jurisdiction of the taxing officer to tax a bill of costs where retainer is challenged. It asserted that the issue of retainer must first be determined by the court before the bill is taxed.
35. The client highlighted that it raised the issue of retainer through para.s 4 & 6 of the replying affidavit sworn on 15.4.2024. Therefore, it contended that the taxing officer erred in principle by taxing the bill of costs without first determining the issue of whether there was an advocate-client relationship.
36. The advocate questioned how the client could claim that there was an error of principle before obtaining the reasons for the taxation.
37. Having already found that the taxation ruling contained sufficient reasons, I reiterate that there was no necessity for the filing of a notice of objection.
38. Para.s 4 & 6 of the replying affidavit sworn on 15.4.2024 read as follows: -

“ 4....the Respondent is aware that the Applicant repeatedly requested to be given instructions to prepare and register the charge but the Respondent did not, at any one time, issue instructions to the Applicant.



5 ...the Applicant, in pushing their agenda to solicit for instructions, on their own motion, without any instructions from the Respondent purportedly drafted a charge, and without instructions and/ or concurrence of the registered land owner, and the Applicant purported to get the Respondent's "approval", which was not granted."

39. From the above, the client raised the issue of retainer.

40. The issue of whether or not an advocate was duly retained and thus entitled to costs ought to be first determined by the court. *Namachanja & Mbugua Advocates v Igainya Limited* [2015] KEHC 5666 (KLR), *Agn Kamau Advocates v Chabrin Agencies Limited* [2021] KEHC 4817 (KLR)

### **Disposal**

41. Accordingly, the client's application dated 19.1.2025 is allowed in part. The taxation ruling dated 18.12.2024 is set aside. The advocate's application dated 22.1.2025 is dismissed.

42. Given the circumstances of the applications, each party shall bear own costs of each application.

43. I direct that the issue of retainer be determined first before the applicant's bill of costs can be considered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

Nyboma for Ojiambo for Advocate

Ms. Njuguna for Client

CA- Kinyua

