



Easy Properties Limited & 2 others v Liko & Anam Advocates (Miscellaneous Civil Application 432 of 2017) [2026] KEHC 1470 (KLR) (Commercial and Tax) (12 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION 432 OF 2017**

PM MULWA, J

FEBRUARY 12, 2026

BETWEEN

EASY PROPERTIES LIMITED 1ST APPLICANT

STEPHEN ONYAMBU OMWENGA 2ND APPLICANT

PAMELA BWARI BURUCHARA ONYAMBU 3RD APPLICANT

AND

LIKO & ANAM ADVOCATES RESPONDENT

RULING

Background

1. Before this Court is the Applicants' Notice of Motion dated 13th August 2024, brought under section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the Civil Procedure Rules, seeking review and setting aside of the judgment delivered on 2nd May 2024, enlargement of time to file a reference against the taxing master's ruling delivered on 21st January 2021, and costs.
2. The application is supported by affidavits sworn by the 2nd and 3rd Applicants. They contend that the proceedings arise from a terminated advocate–client relationship between Liko & Anam Advocates and Easy Properties Limited in arbitration proceedings, that a change of advocates was effected in 2017 culminating to the advocate–client bill of costs dated 25th October 2017 mischievously included the 2nd and 3rd Applicants, who are directors of the 1st Applicant, thereby unlawfully imposing personal liability upon them.
3. They further argue that the taxation proceedings are illegal and unjust ab initio, as the 2nd and 3rd Applicants were not parties to the arbitral proceedings and had no advocate–client relationship with the Respondent.



4. The Respondent opposes the application through the replying affidavit of Tim Agufana Liko, sworn on 2nd October 2024. It is contended that the application is an abuse of the court process, intended to unlawfully enlarge time to file a reference against the taxing master’s ruling after an inordinate and unexplained delay of over three years. He contends that the application is in substance a disguised appeal contrary to Order 45, that no error apparent on the face of the record has been demonstrated and that the argument that the 2nd and 3rd Applicants were not clients is an afterthought, *res judicata*, and contrary to section 2 of the *Advocates Act*.

Analysis and determination

5. I have considered the application, the affidavits on record, and the rival arguments. The issues for determination are:
 - a. Whether the Applicants have met the threshold for review, and
 - b. Whether this Court should enlarge the time to file a reference against the taxing master’s ruling
6. Section 80 of the *Civil Procedure Act* empowers the Court to review its orders where sufficient cause is shown. Order 45 Rule 1 of the Civil Procedure Rules circumscribes the grounds upon which review may be granted, namely:
 - a. Discovery of new and important matter or evidence;
 - b. Mistake or error apparent on the face of the record; or
 - c. Any other sufficient reason.
7. A party seeking review must demonstrate that either of the grounds exists. The Applicants’ case is anchored on the second limb, error apparent on the face of the record. They contend that the inclusion of the 2nd and 3rd Applicants in the taxation and the consequent judgment is a manifest error, readily ascertainable from the record, and does not require re-evaluation of evidence or legal argument.
8. The nature of an error apparent on the face of the record was explained in *Nyamogo & Nyamogo Advocates v Kogo* [2001] EA 173, where the Court held:

“An error apparent on the face of the record is one which is manifest and self-evident and does not require an elaborate argument to establish.”
9. From the record, it is not disputed that the Respondent was retained to act for Easy Properties Limited in arbitration proceedings. However, whether the 2nd and 3rd Applicants were liable for advocate-client costs is not a matter that is self-evident on the face of the record. It calls for interrogation of the nature and scope of the retainer, the factual circumstances surrounding the instructions, and the application of the definition of “client” under Section 2 of the *Advocates Act*. These are contested questions of law and fact that require argument and evaluation.
10. What the Applicants invite this Court to do is to reassess the merits of the ruling delivered on 2nd May 2024, which entered judgment on the Certificate of Taxation dated 12th March 2021 and dismissed the Applicants’ earlier attempt to file a reference without reasons. That exercise would amount to sitting on appeal over the Court’s own decision.
11. It is settled law that review is not an appeal in disguise. It cannot be used to re-argue a case or to correct an alleged erroneous decision. The issue whether the Applicants ought to have been included in the



Bill of Costs is one that ought to have been raised and determined through the appropriate appellate or reference mechanism, not through review.

12. I am therefore not persuaded that the Applicants have demonstrated the existence of an error apparent on the face of the record, discovery of new evidence, or any other sufficient reason to warrant the grant of review.

Enlargement of time to file a reference

13. Paragraph 11 of the Advocates' Remuneration Order stipulates as follows on the reference objecting to the decision of the Taxing Master:

- a. 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 officer after the decision give notice to the taxing officer in writing of the items of taxation which he objects to.
- b. The Taxing Officer shall forthwith record and forward to the objector the reasons or his decision on those items and the objector may within fourteen days from receipt of the reasons apply to a judge by a Chamber Summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
- c. Any person aggrieved by the decision of the Judge upon any objection referred to such judge under subparagraph [2] may, with leave of the Judge but not otherwise appeal.
- d. The High Court shall have power in its discretion by order enlarge the time fixed by subparagraph [2] for taking of any step. An 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 expired.

14. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR authoritatively stated:

“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. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the Court.”

The Court further emphasized that:

“Where there is a delay, it should be explained to the satisfaction of the Court.”

15. In the present matter, the taxing master delivered the ruling sought to be challenged on 21st January 2021. A Certificate of Taxation was issued on 12th March 2021. Thereafter, upon application, this Court entered judgment on the Certificate of Taxation on 2nd May 2024. By operation of law, once judgment is entered on a certificate of taxation, the certificate crystallizes into a decree of the Court.

16. The legal consequences of that crystallization are settled. In *Machira & Co. Advocates v Arthur K. Magugu* [2002] eKLR, the Court held:

“Once a certificate of taxation has been issued and judgment entered, the Court becomes *functus officio* in so far as the taxation is concerned, save for purposes of execution.”



17. Similarly, in *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd* [2006] eKLR, the Court of Appeal stated:

“A certificate of taxation which has not been set aside or altered is final as to the amount of costs and is enforceable as a decree of the court once judgment is entered.”

18. The Applicants now seek enlargement of time to file a reference after the taxation process has been concluded, the certificate issued, and judgment entered. This Court cannot exercise discretion in a manner that would have the effect of reopening a finalized taxation and unsettling a valid decree. To do so would undermine the principle of finality in litigation and defeat the statutory architecture of Rule 11.

19. It is trite law that extension of time is an equitable remedy, not a right, and that the burden lies on the applicant to satisfactorily explain the delay. In the present case, the delay spans over three years, and no credible or plausible explanation has been tendered.

20. More fundamentally, enlargement of time at this stage would be jurisprudentially incoherent. A reference under Rule 11 is designed to challenge a taxing master’s decision before it matures into a judgment. Once judgment has been entered, the Court is functus officio in respect of the taxation, save for execution. Any attempt to resurrect a spent process is procedurally barred and amounts to an abuse of the court process.

21. I am therefore constrained to find that the prayer for enlargement of time is legally untenable and incompetent in light of the issuance of the Certificate of Taxation and the entry of judgment on 2nd May 2024.

22. In the result, the Applicants have failed to satisfy the threshold for review under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, and have equally failed to lay any legal or factual basis for the enlargement of time to file a reference against the taxing master’s ruling.

23. Accordingly, the Notice of Motion dated 13th August 2024 is dismissed in its entirety with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF FEBRUARY 2026.

P.M MULWA

JUDGE

In the presence of:

Mr. Nyaribo for Applicant

Court Assistant: Carlos

