



Meditest Diagnostic Services Ltd v SI Mwaura & Co Advocates (Miscellaneous Application E416 of 2015) [2026] KEELRC 361 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 361 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E416 OF 2015
BOM MANANI, J
FEBRUARY 12, 2026**

BETWEEN
MEDITEST DIAGNOSTIC SERVICES LTD APPLICANT
AND
SI MWAURA & CO ADVOCATES RESPONDENT

RULING

Background

1. Before the court is an application dated 30th October 2025 through which the Applicant seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That the court grants the Applicant leave to file an objection and reference against the taxation ruling which was delivered in ELRC Misc. App. No. E352 of 2025 outside the time that is prescribed under paragraph 11(1) of the Advocates (Remuneration) Order, 2014.
 - d. That the objection and draft reference annexed to the application to be deemed as duly filed and served upon payment of the requisite court fees.
 - e. That the costs of the application to be in the cause.
2. The application is supported by the grounds on the face thereof and the affidavit of Mekenye M Duncan. The Applicant contends that the impugned ruling was delivered by the Taxing Master on 14th July 2025. It asserts that its advocates asked for a copy of the decision from the court in order to advice on the outcome but were unable to get it (the decision) in time.



3. The Applicant avers that efforts to obtain a copy of the decision through the Judiciary's Case Tracking System (CTS) were frustrated because the system was non-responsive. It contends that it took counsel to send his assistant to the court registry to access the decision. It further contends that by the time counsel obtained the decision and sought instructions on the matter, the time for lodging an objection and reference against it (the decision) had lapsed. Hence the plea for extension of time.
4. The Applicant avers that it has a reasonable explanation for not filing the objection and reference within the timelines that are set by law. It further contends that the proposed reference raises substantial questions of law. As such, it prays that the application be allowed.
5. The Respondent has opposed the application. It has filed the affidavit dated 22nd January 2026 to anchor its response.
6. The Respondent contends that the impugned ruling was delivered on 14th July 2025 in the presence of the Applicant's advocates. It contends that if the Applicant wished to prefer a reference against the ruling, it ought to have lodged an objection against it (the ruling) before the lapse of fourteen (14) days from the date it (the ruling) was delivered. However, it (the Respondent) contends that the Applicant did not do so.
7. The Respondent contends that a party who desires to file a reference against a taxation ruling does not require a copy of the ruling in order to lodge an objection to the ruling. As such, it contends that the Respondent has no valid reason why it did not lodge the objection as required by law.
8. The Respondent contends that a reference must be preceded with an objection. As such, it contends that the Applicant cannot lodge the proposed reference without having lodged an objection to the impugned ruling. Consequently, it (the Respondent) posits that absent the letter of objection, the proposed reference is doomed to fail.
9. The Respondent contends that contrary to the Applicant's assertions that the impugned ruling was not accessible, it (the ruling) was posted on the Judiciary CTS on 15th July 2025. As such, it avers that the said ruling was accessible to the parties since that date.
10. The Respondent contends that the Applicant has not accounted for the delay in filing the objection and reference. Further, it avers that the application for enlargement of time was filed more than ninety (90) days after the impugned ruling was delivered. It contends that the Applicant has not accounted for this inordinate delay in filing the application and is thus undeserving of the orders sought.

Analysis

11. The instant proceedings are anchored on provisions of the *Advocates Act* and the Advocates (Remuneration) Order which provide for ascertainment of Advocates costs. Paragraph 11 of the Advocates (Remuneration) Order provides, in part, as follows:-
 - i. 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.
 - ii. 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.



- iii. 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.
 - iv. 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.
12. Ideally, a party who is unhappy with a taxation order and wishes to challenge it before the High Court or a Court of Equal Status is required to lodge an objection to the decision within 14 days of the decision. The purpose of the objection is to notify the Taxing Master the items in respect of which the party objects so that the Taxing Master can furnish him with the reasons for his decision on the said items.
 13. Although the law provides for lodging of an objection, case law indicates that this is not mandatory if the impugned ruling contains reasons for the decision. In such case, the aggrieved party may file the reference without first filing an objection (*Evans Thiga Gaturu Advocate vs Kenya Commercial Bank Limited* [2012] eKLR). As such, the Respondent's contention that a reference can only be filed after lodging an objection to the taxation ruling in respect of which it (the reference) is to be filed is flawed.
 14. The other thing to note from the aforesaid rule is that it sets the timelines for filing the objection, if at all, and the reference. Where the taxation ruling does not contain the reasons for the decision, the aggrieved party may call for the reasons by lodging an objection to the ruling within 14 days of delivery of the decision. However, where the ruling contains the reasons for the decision, the aggrieved party need not await the supply of the reasons by the Taxing Master (*Joseph Tamata v Mary Nthambi Mbuvi* [2021] KEHC 4921 (KLR)). As such, he is obligated to file the reference within 14 days of delivery of the ruling.
 15. Nevertheless, the rule recognizes that a party may sometimes not be able to meet the timelines for filing the objection or reference. As such, it (the rule) grants the court the power to enlarge the time for filing the objection and or reference out of time. However, enlargement of time can only be granted if the applicant is able to demonstrate that he has sufficient reasons which prevented him from filing the objection and or reference within the set timelines.
 16. The court has looked at the taxation ruling in the instant action and it is apparent that it bears the reasons for the decision. As such, there was no need for the Applicant to file an objection to the ruling before it could lodge a reference against it (the ruling).
 17. The net effect of this finding is that the fourteen (14) days within which the Applicant was to file the reference begun to run from 14th July 2025 when the ruling was delivered. Therefore, the time for filing the reference ran out on 28th July 2025.
 18. The record shows that by 28th July 2025, the Applicant had not lodged the reference. And hence the instant application for leave to file the reference out of time.
 19. Whilst the time for filing the reference lapsed on 28th July 2024, the record shows that the application for leave to file the reference out of time was filed on 30th October 2024, approximately ninety five (95) days from the date the proposed reference became time barred. Has the Applicant accounted for the delay in filing the request to file the reference out of time? In my respectful view, I do not think so.



20. The Applicant says that although the taxation ruling was delivered on 14th July 2025, its lawyers were not able to get a copy of the decision immediately because of technical challenges. The lawyers aver that every time they tried to log into the CTS, it would record an error. They contend that it took them sending their assistant to the court registry to retrieve a copy of the ruling.
21. The above assertion is vehemently disputed by the Respondent's advocates. They aver that the ruling was posted on the court's CTS on 15th July 2025 and was accessible by the public from then.
22. The Respondent's lawyers aver that they were able to access the system around the same time to print the Certificate of Taxation. As such, they contend that the Applicant's advocate's assertion that the system could not be accessed is untrue.
23. A visit to the CTS confirms the Respondent's advocates' assertion that the impugned ruling was uploaded on 15th July 2025. As such, it was accessible to the parties from then.
24. Although the Applicant's lawyers allege that they could not access the ruling because of a system error, there is no evidence to back this claim. There is no evidence to demonstrate that they alerted the court about their inability to access the system. They did not write a letter or email to report their alleged challenges. As such, there is nothing to affirm their assertion that they were prevented from accessing the ruling due to system challenges.
25. Importantly, if it is true that the lawyers experienced this challenge, what prevented them from visiting the court registry the following day to pick the ruling in time for filing the reference since they are presumed to have been aware of the timelines for filing it? Why did they have to wait until the last minute to visit the court for a copy of the ruling?
26. What is curious is that the Applicant has carefully avoided to mention the exact dates its lawyers visited the court registry to retrieve the ruling and when they accessed a copy thereof. This non-disclosure is suspect.
27. At paragraph 10 of the Applicant's submissions in support of the motion, it is indicated that the lawyers were given instructions to file the reference on 8th July 2025. Yet, in ground (e) in the grounds in support of the application, it is indicated that these instructions were given on 14th October 2025. In the court's view, these contradictions suggest that the Applicant is less than candid regarding the circumstances which led to the delay in filing the reference. And this must be held against it (the Applicant).
28. In the court's view, the Applicant has not accounted for the unreasonable delay in presenting the instant application for leave. There is simply no narrative in the affidavit in support of the application to demonstrate why the Applicant took more than 90 days to present the instant motion.
29. In *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] KESC 16 (KLR), the Supreme Court stated that in an application for extension of time, the applicant must not only set out the period of delay but also account for it to the satisfaction of the court before the orders can issue. The court stated on the matter as follows:-

"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."
30. There is no doubt that the court has discretion to grant the orders sought. However, this discretion must be exercised judiciously.



31. In *Edith Gichugu Koine vs. Stephen Njagi Thoithi* [2014] eKLR, the Court of Appeal set out what ought to be considered in determining whether to exercise the discretion to enlarge time for doing some act required under the law. The court pronounced itself on the matter as follows:-
- “Nevertheless, it [the discretion] ought to be guided by consideration of factors stated in many previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others...”
32. In the Supreme Court case of *County Executive of Kisumu v County Government of Kisumu & 8 others* (supra), the court gave the following guidelines for determining a motion for enlargement of time:-
- a. 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;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay.
33. In the circumstances of this case, the court would only have been entitled to exercise the discretion in favour of the Applicant if it (the Applicant) had presented a cogent justification for the aforesaid delay. However and as the record shows, it (the Applicant) has not discharged this burden. As such, it will be an abuse of the court’s discretion to grant the orders sought (*Dreamline Express v Siku & another* [2023] KEHC 25792 (KLR)).
34. Underscoring the importance of accounting for the delay before the court can enlarge time for filing proceedings, the trial court in *Stanley Kahoro Mwangi & 2 Others v Kanyamwi Trading Company Limited* [2015] eKLR, stated as follows:-
- “A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercised.”
35. As to the prospects of the proposed reference being successful, the Applicant did not address this matter in either the grounds or the affidavit in support of the application. The first time it spoke to the matter is through the submissions of counsel on the application.
36. It is trite that submissions cannot be a substitute for evidence (*Dardanelli & 6 others v Tilito & 3 others* [2025] KEELC 392 (KLR)). Where a matter is supposed to be supported by evidence, either oral or affidavit evidence should be tendered on oath to anchor the case. One cannot ignore this requirement and seek to substitute the evidence required with submissions. For this reason, the court finds that the Applicant did not demonstrate by affidavit evidence that the reference has prospects of success.



37. Nevertheless, assuming that the court is wrong on the matter, has the Applicant demonstrated that the reference has significant prospects of success on the merits? I think not.
38. A cardinal principle in taxation is that the court adjudicating on a reference is not entitled to interfere with the discretion of the Taxing Master unless it is demonstrated that he (the Taxing Master) committed an error of principle whilst taxing the bill of costs (*Mwangi Keng'ara & Co Advocates v Mungai* [2024] KEHC 14369 (KLR)).
39. In this case, the Applicant's case is that the Respondent did not handle the brief from which the taxation arose to conclusion. As such, it contends that the Taxing Master ought to have awarded only 75% of the chargeable fee but ignored this requirement.
40. The court has looked at the impugned ruling and it is apparent that contrary to the Applicant's contention, the Taxing Master was aware of and considered this requirement. He expressed himself on the matter as follows:-
- “I will also apply provisions of schedule 7 A (1) (b) which provides for a suit that is determined without going for full trial the fee shall be 75% of the fee chargeable under item 1(b).”
41. From this statement, it is apparent that the Taxing Master considered the requirement to discount the chargeable fees by 25% thereby allowing only 75% thereof. As such, the Applicant's grievance in this respect is unmerited.
42. The Applicant also contends that the fees on items 1 and 2 in the Bill of Costs was manifestly excessive. However, it does not state what it considers was the appropriate fees in respect of the two items.
43. The law is that the court considering a reference is not entitled to interfere with a decision of the Taxing Master merely because it considers that the amount awarded is somewhat high or low (*M/S Oduk & Co. Advocates v Mideny* [2025] KEHC 6825 (KLR)). It can only interfere where it is demonstrated that the amount awarded was manifestly excessive or low as to amount to an error of principle. The Applicant has not demonstrated how the amount which was awarded as instructions fees is manifestly excessive.
44. The Applicant contends that the Taxing Master did not apply the correct principle in determining the value of the subject matter. It relies on the High Court case of *D Njogu and Co. Advocates v Kenya National Capital Authority* [2005] eKLR to contend that the value of the subject matter in a suit remains indeterminate until judgement is delivered. As such and based on this, it (the Applicant) argues that it was wrong for the Taxing Master to have considered the amount claimed in the suit as reflective of the value of the subject matter even before the cause was determined.
45. The above decision ought to be considered against other decisions on the subject. In this regard, the court has in mind the Court of Appeal case of *Peter Muthoka & another v Ochieng & 3 others* [2019] KECA 597 (KLR) where the learned Judges of the court identified three factors to be deployed in determining the value of the subject matter in a suit. These are, the pleadings, the judgment or settlement of the parties. The court further observed that the factor to be deployed for this purpose is determined by the stage at which the taxation is undertaken in the case. Where taxation occurs before the trial is concluded, the right indicator to be used to determine the value of the subject matter are the pleadings. The court expressed this view in the following manner:-

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where



it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.”

46. Having regard to the foregoing, the Applicant’s contention that the Taxing Master ought not to have relied on the pleadings to determine the value of the subject matter when the taxation was undertaken before judgment appears incorrect. If the aforesaid Court of Appeal decision which is binding on this court is to provide guidance on the matter, the indicator which was to be used to determine the value of the subject matter at the stage at which the taxation took place were the pleadings.
47. The Applicant further contends that the Taxing Master ought to have awarded Ksh. 300 for routine correspondence and not Ksh. 1000. The Applicant relies on Schedule 5 of the Advocates (Remuneration) Order to support this argument. Yet, the impugned Bill of Costs was premised on Schedule 6 of the Advocates (Remuneration) Order where fees for routine correspondence is fixed at Ksh. 1000 as awarded by the Taxing Master.
48. It is thus apparent that the Applicant has not demonstrated that the proposed reference has high prospects of success. This being the case, this court is disentitled to exercise its discretion to enlarge the time for presentation of the reference.
49. As I finalize on the matter, I note that in the Applicant’s submissions, it contends that the impugned ruling was delivered on 10th June 2025. Yet, the ruling in this matter was delivered on 14th July 2025.
50. The Applicant further avers in the submissions that the application under consideration is dated 9th July 2025. Yet, the motion under consideration is dated 30th October 2025.
51. The Applicant further contends in the submissions that the Bill of Costs was taxed at Ksh. 368,325.88. Yet, the costs that were awarded in the impugned ruling are Ksh. 1,416,975.00.
52. At paragraph 7 of the Applicant’s submissions, it contends that there was a twelve (12) day delay in filing the instant application. Yet, from 14th July 2025 when the ruling was delivered to 30th October 2025 when the instant application was presented is a period of close to ninety five (95) days.
53. These discrepancies in the Applicant’s submissions are troubling. They cast doubts on whether the submissions were intended for this action or were erroneously filed in the suit. Crucially, the contradictions muddle the Applicant’s case even further.

Determination

54. The upshot is that the court finds that the instant application is unmerited.
55. Consequently, it is dismissed.
56. Each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED ON THE 12TH DAY OF FEBRUARY, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Applicant



.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

