



**Kirui v Rotich (Miscellaneous Civil Application E022 of 2025)
[2026] KEHC 3138 (KLR) (10 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3138 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION E022 OF 2025**

**JK SERGON, J
MARCH 10, 2026**

BETWEEN

JOSEPH KIRUI APPLICANT

AND

PHILIP K. ROTICH RESPONDENT

RULING

1. This Ruling determines a Reference filed by the Applicant, Joseph Kirui, by way of a Chamber Summons dated 16th April 2025. The Applicant is aggrieved by the Ruling of the Taxing Master (Hon. F.M. Nyakundi, Principal Magistrate) delivered on 14th March 2025, wherein the Taxing Master taxed the Respondent's Party and Party Bill of Costs dated 11th October 2024 at Kshs. 104,839/= (hereinafter "the Taxed Costs").
2. The Bill of Costs arose from earlier proceedings wherein the Applicant had filed an Application dated 18th July 2023 seeking stay of execution of orders from the Kericho Business Premises Rent Tribunal (BPRT No. 2 of 2018). That Application was dismissed with costs to the Respondent. The Respondent thereafter filed the Bill of Costs, which is the subject of this Reference.
3. The Respondent opposes the Reference through a Replying Affidavit sworn on 22nd July 2025 by PHILIP K. ROTICH, the Respondent herein, and through Written Submissions dated 15th August 2025 filed by the firm of Erick Korir & Associates LLP.
4. The court gave directions on the filing of submissions on 9th October 2025, and the Applicant was granted 14 days to file his submissions. As at the time of writing this Ruling, the court has considered the pleadings on record.
5. From the Respondent's Affidavit and Submissions, the Applicant's grievance appears to be that;
 - a. The Taxed Amount is excessive and oppressive.



- b. The Taxing Master failed to properly consider the value of the subject matter.
 - c. The Taxing Master erred in principle in arriving at the sum of Kshs. 104,839/=-.
6. The Applicant prays that this court interferes with the Taxing Master's decision, though the exact prayers are not reproduced in the Respondent's documents.
7. The Respondent raises three main pillars of opposition;
- a. The Respondent contends that the Reference is fatally defective for being filed out of time. Relying on Paragraph 11 of the Advocates (Remuneration) Order, the Respondent submits;
 - i. The Taxing Master's Ruling was delivered on 14th March 2025.
 - ii. The Applicant's Notice of Objection is dated 1st April 2025, which is outside the 14-day window prescribed by Paragraph 11(1).
 - iii. The Reference itself was filed on 16th April 2025, also outside the 14-day window prescribed by Paragraph 11(2).
 - iv. The Applicant has not sought leave to file out of time, nor offered any explanation for the delay.
 - b. The Respondent submits that the Taxing Master exercised his discretion judiciously. He considered the value of the subject matter (approximately Kshs. 1,029,300/-), applied the principles in *Raichand Ltd vs Quarry Services of East Africa Ltd* [No.3] [1972] EA 162, and taxed the Bill item by item. The Respondent cites *First American Bank of Kenya vs Shah and Others* [2002] 1 EA 64 and *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR for the proposition that this court should not interfere with a Taxing Master's discretion in the absence of an error of principle.
 - c. The Respondent also submits that the Reference is an abuse of process, intended only to delay the Respondent from enjoying the fruits of his costs.
8. After careful consideration of the pleadings, affidavits, and submissions on record, the following issues arise for determination;
- a. Whether the Reference dated 16th April 2025 is competent, having regard to the mandatory timelines prescribed under Paragraph 11 of the Advocates (Remuneration) Order.
 - b. Whether, assuming competence, the Applicant has demonstrated an error of principle on the part of the Taxing Master to warrant interference by this court.
 - c. What orders should be made regarding costs?
9. The procedure for challenging a taxation decision is governed by Paragraph 11 of the Advocates (Remuneration) Order. It provides a strict, sequential timeline;
- 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.



10. The importance of adhering to these timelines cannot be overstated. They are not mere procedural technicalities but are designed to ensure finality and expeditious disposal of matters relating to costs. The Court of Appeal has consistently held that the timelines in Paragraph 11 are mandatory and must be strictly complied with as seen in the case of *Evans Thiga Gaturu, Advocate v Kenya Commercial Bank Limited* [2012] eKLR).
11. Counting from the date of the Ruling, 14th March 2025, the 14-day period for filing a Notice of Objection expired on 28th March 2025. The Notice dated 1st April 2025 was therefore filed 4 days out of time.
12. Even if I were to consider the Notice as effective from 1st April 2025, and assuming the Taxing Master issued reasons on that same day, which is not confirmed, the 14-day period for filing the Reference would have expired on 15th April 2025. The Reference filed on 16th April 2025 was therefore filed 1 day out of time.
13. The Respondent has annexed to their Submissions a copy of the Notice of Objection dated 1st April 2025. The Applicant has not challenged this averment or provided any evidence to the contrary. More critically, the Applicant has not filed any application seeking leave to file the Reference out of time, nor offered any explanation, let alone a plausible one, for the delay.
14. The law on extension of time is well settled. In *County Executive of Kisumu v County Government of Kisumu & 8 Others* [2017] eKLR, the Supreme Court of Kenya laid down the principles guiding extension of time, including that:
 - Extension of time is not a right but an equitable remedy.
 - The party seeking extension has the burden of laying a basis to the satisfaction of the court.
 - The delay must be explained to the satisfaction of the court.
 - Whether there will be any prejudice suffered by the respondents if the extension is granted.
15. In *Dilpack Kenya Limited v William Muthama Kitonyi* [2018] eKLR, Odunga J. (as he then was) stated emphatically:

“If the appellant had a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant.”
16. The Court of Appeal in *Jaber Mohsen Ali & another v Priscilla Boit & another* [2014] eKLR reminded us that even one day after judgment could constitute unreasonable delay depending on the circumstances.
17. In the present case, the Applicant has offered no explanation whatsoever. He has not sought leave. He has simply filed a Reference out of time and hopes that the court will overlook the procedural lapse. This court cannot condone such blatant disregard of statutory timelines. To do so would be to render the clear provisions of Paragraph 11 nugatory and encourage litigants to ignore prescribed timelines with impunity.
18. I therefore find and hold that the Reference dated 16th April 2025 is incompetent for being filed out of time and without leave of the court. It is liable to be struck out on this ground alone.
19. Having found the Reference incompetent, I would be entitled to stop here.



20. The general rule is that costs follow the event. The Respondent has successfully defended this Reference. He has had to expend time and resources to respond to an incompetent application that appears designed to delay the lawful costs awarded to him. The Respondent also drew the court's attention to the long history of this matter, noting that the underlying tenancy dispute has been ongoing since 2018, with the Applicant filing multiple applications that delay finality.
21. In Paragraph 11(4) of the Advocates (Remuneration) Order, this court has discretion to award costs in a Reference. I find no reason to depart from the general rule.
22. For the reasons set out hereinabove,
 - a. The Reference dated 16th April 2025 is hereby ordered struck out for being incompetent and being filed out of time without leave of the court.
 - b. Costs is awarded to the Respondent.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 10TH DAY OF MARCH, 2026.

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J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Amaya holding brief for Koriri for Respondent

No Appearance for the Applicant

