

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC MISCELANEOUS CIVIL APPLICATION NO E046 OF 2024**

**IN THE MATTER OF: CHIEF MAGISTRATE ENVIRONMENT**

**AND LAND CASE NUMBER 8 OF 2019**

**AND**

**IN THE MATTER OF: HIGH COURT MISCELLANEOUS**

**APPLICATION NO.18 OF 2019 SEEKING TO TRANSFER**

**CMCELC NO 8 OF 2019**

**BETWEEN**

**1. FATUMA ATHMAN KOMBO**

**2. MWINYI NZANGU (Suing in the capacity of the**

**administrator of the estate of SALIM NZANGU BAKARI in**

**Succession Cause No. 160 of**

**2018.....PLAINTIFF**

**S**

**VERSUS**

**1. MIKE KAINGU KAZUNGU**

**2. R.M. TINDIKA t/a TINDIKA & COMPANY ADVOCATES**

**3. FELIX AYUYA MIDIKIRA t/a MIDIKIRA & COMPANY  
ADVOCATES**

**4. THE REGISTRAR OF TITLES MOMBASA.....  
DEFENDANTS**

**IN THE MATTER OF: TAXATION OF ADVOCATE/CLIENT  
BILL OF COSTS**

**BETWEEN**

**RANDOLPH M. TINDIKA t/a TINDIKA & COMPANY**

**ADVOCATES.....APPLICANT**

**VERSUS**

**MIKE KAINGU KAZUNGU.....**

**.....RESPONDENT RULING**

**1. We have two motions in place. The first one is dated June 23, 2025, and seeks the following reliefs:**

**a) This court be pleased to grant leave to the applicant to file a reference out of time against the ruling of the taxing master Hon Thamara Deputy Registrar, Environment and Land Court, Malindi**

**b) The execution of costs awarded to the respondent upon the ruling delivered on the 14th April, 2025, be stayed pending the hearing interpartes and further pending the determination of this application.**

**c) The costs of this application be provided for.**

2. It is opposed.

3. The 2<sup>nd</sup> one is the one dated the 18th of July, 2025. The applicant seeks the following orders:

**a) This Court be pleased to enter judgment in favor of the applicant and against the respondent in the sum of Kshs. 1,182,481.60, being the taxed costs herein, and consequently convert the Certificate of Costs issued in this matter on April 14, 2025, into a Decree.**

**b) this Court be pleased to order that the said amount of Kshs. 1,182,481.60 shall attract interest at 14% per annum from April 14, 2025, until full payment.**

**c) the respondent bears the costs of this application.**

4. The application is opposed.

5. The two applications were canvassed through written submissions.

6. Arising from the materials and submissions by the parties on the 1st application, the issues before this court are whether to

extend the time to file a reference and to stay the execution of the ruling resulting from the taxation by the Taxing Officer.

**7.** The applicant asserts that, in accordance with paragraph 11(1) of the Advocates' Remuneration Order 2009, they filed a written notice with the Taxing Master because they were aggrieved and objected to the entire ruling solely because there was no advocate-client relationship. This is shown in annexure marked "MKK4," which is a copy of the written notice of objection dated 28th April 2025. There were no reasons for the respondent to be awarded costs of Kshs—1,182,481.60, payable by the applicant.

**8.** The applicant filed the notice of objection within the set fourteen-day (14) timeline. Furthermore, the applicant caused another letter dated 20th April 2025 to be sent, seeking reasons for the taxation of the bill of costs dated 11th November 2024, noting that time was of the essence.

**9.** The applicant then filed this application by chambers summons to seek leave to file the reference out of time. Applicant submits that the honorable court has the power, under paragraph 11(4), to enlarge the time for the applicant to file the Reference out of time, and it is our humble prayer that the court

grant leave for this. Since this is a chamber summons application, it should be filed in the same cause from which the substantive bill of costs dated 11th November 2024 originated, which is Miscellaneous Application Number 46 of 2024; therefore, any application related to the bill of costs should be filed in the same cause.

**10.** Regarding the potential prejudice to the applicant if the court declines to grant leave, the applicant submits that the delay in filing the Reference on time was caused by the applicant's waiting for the reasons from the Taxing Officer after filing the written notice of objection dated 28th April 2025. According to paragraph 11(2) of the Act, the Taxing Officer shall promptly record and forward the reasons for the decision to the objector, and within fourteen (14) days of receiving those reasons, the objector may apply to a judge by chambers summons, served on all parties, setting out the grounds of objection.

**11.** Applicant avers that without the reasons being furnished, the applicant could not file the Reference, as paragraphs 11(1), (2), (3), and (4) are couched in mandatory terms. This prompted the applicant to send an enquiry letter dated 25th May 2025 to the

Deputy Registrar of the Environment and Land Court in Malindi,  
Hon. Thamara.

**12.** The applicant has been following the procedures outlined in paragraph 11(2) of the Advocates Remuneration Act, believing that the ruling delivered by the taxing master on 8th April 2025 did not include reasons, as the taxing master failed to consider that there was no advocate-client relationship before determining the bill of costs. Therefore, it is apparent that the Taxing Master erred both in law and fact by failing to determine whether such a relationship existed.

**13.** Applicant asserts that only this honorable court has the authority to enlarge the time for the applicant to file the Reference, noting that the notice of objection was filed within the prescribed fourteen (14) days after the ruling was delivered on 8th April 2025. Since April included the Easter holidays, Order 50 Rule (3) of the Civil Procedure Rules applies.

**14.** Applicant further contends that rule 11(1) has been properly complied with, and the notice of objection dated 28th April 2025 remains pending before the Taxing Officer. No record or reasons for the Taxing Officer's decision on the entire taxation have been forwarded, despite an enquiry letter dated 20th May 2025.

**15.** Conversely, the respondent in this application submits that the Ruling of the Taxing Officer was issued on April 8, 2025. Therefore, any Objection to the Taxation should have been filed by April 22, 2025. The fact that the Ruling was issued on April 8, 2025, is clearly stated in the Respondent's Advocates' letter dated April 28, 2025, which was filed more than twenty (20) days after the Ruling, significantly exceeding the fourteen (14) days allowed by law.

**16.** Ideally, a reference to the High Court regarding a taxation ruling (pursuant to Rule 11 of the Advocates (Remuneration) Order) should be filed within 14 days. The applicant admits that this deadline was missed, leading to the current application.

**17.** Courts have the discretion to grant an extension of time within which to file an appeal (including a Reference) based on established principles, most notably as articulated by the Supreme Court in the case of **Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)**.

**18.** The considerations include the period that has passed since the appeal deadline, as required by law or statute. Although there is no fixed minimum or maximum delay, a longer

postponement generally weakens the justification for an extension. A short delay of a few days is usually viewed more leniently than one lasting several months. The reason for the delay often plays a significant role in the decision. The applicant must provide a believable and satisfactory explanation for the delay. Recognized causes in law include inadvertence or counsel's mistake; delays caused by the court registry in releasing the formal taxation ruling; and illness or disability. The extent of prejudice depends on whether granting an extension would cause irreparable harm to the respondent (the successful party in the taxation), or whether denying the extension would prevent the applicant from challenging a potentially flawed taxation. The challenge's strength lies in an initial review of the proposed issue. It is not necessary to show a high likelihood of success, but to demonstrate that the challenge is not frivolous and involves a discernible issue—such as the Taxing Officer making an error of principle or the awarded fees being, for example, obviously excessive or clearly too low, warranting intervention. Public interest may also influence the decision, especially if the case involves an important legal point or has broad implications for the justice system. The court also

considers whether there has been undue delay in submitting the application. For example, if the applicant waited an extra month after discovering the missed deadline before applying for an extension, that could be considered an undue delay.

**19.** Considering the reasons provided by the applicant, especially that there was an issue regarding the advocate-client relationship between the parties which was disputed, and that the Taxing Officer did not provide reasons on this matter, with the delay caused by this reason, and that the 20-day delay cannot be considered plainly unreasonable, and weighing the interests of both parties, I believe this is one of those cases where an extension of time to file a Reference should be granted. I will proceed to extend the deadline for filing a Reference accordingly:

**a) That the applicant file and serve the Reference within 21 days of this Ruling.**

**b) A temporary stay of execution of the Ruling by the Taxing Officer in the Ruling dated and delivered on April 14th, 2025, is hereby granted.**

**c) Failure to comply with the foregoing prayers sought in the Notice of Motion dated 18th of July, 2025, to take effect.**

**20.** Since the Notice of Motion dated 18<sup>th</sup> July 2025 has been significantly affected by the orders above. Its outcome will depend on the compliance I have set out in paragraph 19 above, and the same will thus be stayed in terms of the conditions I have provided.

**21.** As to cost, the same will abide the outcome of the Reference, if any will be filed.

**22.** Orders accordingly.

**Dated, signed, and delivered electronically in Nyeri on this 11th day of March, 2026.**

**E. K. MAKORI**

**JUDGE**

**In the Presence of:**

**Mr. Tindika for the Applicant**

**Ms. Memia for the Respondent**

**Kendi: Court Assistant**