



**Ugunzi & another v VM (Minor Suing through his Next Friend and Father EKM) (Civil Miscellaneous Application E031 of 2024) [2026] KEHC 2328 (KLR) (23 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2328 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CIVIL MISCELLANEOUS APPLICATION E031 OF 2024**

**JN KAMAU, J**

**FEBRUARY 23, 2026**

**BETWEEN**

**MARTIN JUMA UGUNZI ..... 1<sup>ST</sup> APPLICANT**

**SIMON KILLY MBANI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**VM (MINOR SUING THROUGH HIS NEXT FRIEND AND FATHER  
EKM) ..... RESPONDENT**

**RULING**

1. In their Chamber Summons dated 4<sup>th</sup> September 2024 and filed on 19<sup>th</sup> September 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants herein sought orders that they be granted leave to file a Taxation Reference before this court against the assessment of costs delivered on 11<sup>th</sup> April 2023 in Vihiga PMCC No 167 of 2020 VM (Minor suing through his next friend and father EKM vs Martin Juma Ugunzi and Simon Killy Ambani).
2. They also sought that the Objection to the Taxing Officer Application for Reference annexed hereto be deemed as duly filed and served upon payment of the requisite fees.
3. On 4<sup>th</sup> September 2024, their Advocate, Maureen Tesot, swore an Affidavit in support of the said Chamber Summons on their behalf. They averred that they were aware that on 11<sup>th</sup> April 2024, the Court in Vihiga PMCC No 167 of 2020 delivered its Ruling on the Plaintiff Party & Party Bill of Costs dated 19<sup>th</sup> October 2023.
4. They stated that their efforts to get a copy of the said Ruling were futile as the Trial Magistrate who had been transferred did not return the file to Vihiga Law Courts in good time. They pointed out that a copy of the Ruling was supplied to them on 8<sup>th</sup> August 2024 and that upon forwarding the same to the insurer, the insurer was dissatisfied with the assessed costs and instructed them to file a reference. They were emphatic that they were not able to file the same pursuant to Section 11(1) and (2) of the



- Advocates Remuneration Order, 2014 as the copy of the Ruling had not been supplied. They added that the Respondents' costs were not subjected to fifty (50%) per cent liability.
5. They sought the leave of this court to file the Notice of Objections and a Reference and asserted that unless their application was allowed, the Applicant would be condemned unheard and the intended Reference rendered nugatory as the Respondents would proceed with execution against them as orders of stay of execution lapsed on 15<sup>th</sup> April 2023.
  6. Ayinga Asiligwa Chanzu, the Respondent's Advocate swore a Replying Affidavit in opposition to the said application and on behalf of the Respondent on 26<sup>th</sup> September 2024. The same was filed on 1<sup>st</sup> October 2024.
  7. The Respondent averred that the Applicants' application was fatally defective as it offended Rule 11 of the Advocates Remuneration Order (2014) because the Reference was filed five (5) months after the delivery of the said Ruling of 11<sup>th</sup> April 2024.
  8. He blamed the Applicants for having failed to file the Reference within the prescribed period and for not showing a good cause for the delay. He added that the Applicants had not offered any sufficient reason why they did not instruct their counsel on record to file an objection and the reference timeously despite being aware of the Ruling which was delivered in the presence of both counsels. He termed the delay of five (5) months as inordinate.
  9. He further contended that the Applicants had demonstrated a lack of seriousness on their part for not annexing a letter duly received by the Magistrate's Court requesting for a copy of the Ruling or documentation to prove that they had paid a deposit for any intended objection whatsoever.
  10. He was emphatic that no good and sufficient cause had been shown by the Applicants to persuade this court to exercise its discretion and grant the orders sought. He pointed out that the application had been brought in bad taste with the sole aim of stopping him from accessing and enjoying the fruits of the Ruling which was rightfully earned after due process of civil litigation.
  11. He urged the court not to aid the Applicants' indolence and incompetence by sanctioning the application herein. He argued that although an objection and taxation reference was a constitutional right, the same could only be enjoyed, achieved and operationalised under a set of statutory rules and that the Applicants had breached the said statutory rules and procedure.
  12. Both parties did not file any Written Submissions. The Ruling herein is, therefore, based on the parties' affidavit evidence only.

### **Legal Analysis**

13. Paragraph 11(1) and (2) of the Advocates Remuneration Order provides as follows:-
  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.”



14. Indeed, in exercising its discretion to allow an application seeking extension to file a reference out of time, a court had to be satisfied that the omission to file the same within time was excusable. In other words, there had to be a plausible explanation for the delay in filing the reference.
15. It was apparent from the court record that the Ruling the Applicant intended to appeal against was delivered on 11<sup>th</sup> April 2024. The present application was filed on 19<sup>th</sup> September 2024. About five (5) months and eight (8) days had since passed. However, this was not an inordinately long period.
16. Going further, the Applicants pointed out that the delay in filing the Reference was occasioned by the difficulties in obtaining the copy of the Ruling as the court file could not be traced in good time as the Trial Magistrate had not forwarded the file back to Vihiga Law Courts. Be that as it may, this court noted that they did not annex any letters addressed to the Trial Court requesting for the said copy of the Ruling. This was a great omission on their part.
17. Having said so, every party has a right to access any court or tribunal to have its dispute heard and determined in accordance with Article 50(1) of *the Constitution* of Kenya, 2010. Even where a party delays in doing an act, there is always a provision that would give it reprieve to seek justice.
18. Notably, Order 50 Rule 6 of Civil Procedure Rules, 2010 empowers the court to enlarge the time to do a particular act. The said Order 50 Rule 6 of Civil Procedure Rules stipulates as follows:-

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise”.
19. Against this backdrop, this court perused the Applicants’ present application but did not see the Notice of Objection and the Reference they had said to have annexed. Be that as it may, it was not required to consider the merits or otherwise of the Notice of Objection and the Reference as that was strictly under the purview of the court that was to hear and determine the reference. All that it was expected to do at this stage was to consider if the Applicants herein had demonstrated that they had arguable grounds of appeal as against the impugned Ruling.
20. While considering whether or not to grant an order for extension to do any act, the court was also required to consider if the opposing side would suffer any prejudice if extension of time was granted. This court did not see any prejudice that the Respondent would suffer or was likely to suffer if the Applicants herein exercised their constitutional right of appeal. If there was any prejudice, then he did not demonstrate the same.
21. Taking all the factors hereinabove into account, it was the considered view of this court that it was in the interests of justice (emphasis court) that the Applicants be given an opportunity to have their Reference heard on merit as they would suffer prejudice if they were denied an opportunity to fully present their Reference to be heard on merit.



22. Indeed, the power to grant orders in the interest of justice and/or for the ends of justice (emphasis court) is well captured in Section 3A of the Civil Procedure Act that states that: -

“Nothing in the Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice (emphasis court) or to prevent abuse of the process of the court.”

### **Disposition**

23. For the foregoing reasons, the upshot of this court’s decision was that the Applicants’ Chamber Summons application dated 4<sup>th</sup> September 2024 and filed on 19<sup>th</sup> September 2024 was merited and the same be and is hereby allowed in terms of Prayer No (3) therein on the following conditions: -

1. That the Applicants be and are hereby granted leave to file a Reference against the decision of the Taxing Master of 11<sup>th</sup> April 2024.
2. That the Applicants be and are hereby directed to file and serve their Notice of Objection within fourteen (14) days from the date of this Ruling.
3. That the Applicants be and are hereby directed to file and serve their Reference within fourteen (14) days after the Taxing Officer forwards to them the reasons for her decision.
4. That in the event the Applicants fail to comply with Paragraph 23(2) and (3), the Respondent will be at liberty to commence legal proceedings for recovery of the taxed costs.
5. That this matter will be mentioned on 13<sup>th</sup> May 2026 to confirm compliance of the order in Paragraph 23 (2) and (3) hereinabove and/or for further orders and/or directions.
6. Costs of the application herein will be in the cause.

24. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 23<sup>RD</sup> DAY OF FEBRUARY 2026.**

**J. KAMAU**

**JUDGE**

