

practice by both advocates. The advocate failed to communicate any progress made in the matter but became aware of the taxation by consent when served with the application to endorse the Certificate of Costs on 29/8/2025. Therefore, the delay in filing the reference has not been inordinate. Consequently, the mistakes of its advocates should not be attributed to it, as it is eager to prosecute the reference and Bill of Costs. Furthermore, the reference has a strong chance of success, and in any case, no prejudice will be caused to the respondent if this instant application is granted.

3. The application was opposed through a replying affidavit sworn by Eric Nyarangi Ntabo on 17/10/2025, on the grounds that the application was fatally defective, misconceived, and an abuse of the court process. It sought to challenge a Bill of Costs lawfully taxed and settled by consent of both parties. It was averred that the applicant's claim that it was unaware of the consent of 27/11/2024 or that its advocates acted without instructions was false, misleading, and calculated to misrepresent the facts, based on the correspondence between the parties. The applicant was duly served and made a partial payment of the agreed sums but then applied to settle other agreed bills by instalments of Kshs. 50,000/-. These prayers were dismissed by the court as an afterthought. The applicant's conduct in partly paying the consented amount and seeking indulgence to clear the balance demonstrated its full knowledge and acceptance of the consent,

thus it is estopped from denying it. The applicant has not shown grounds to vary the consent, and therefore, the consent remains binding and conclusive. Furthermore, a reference cannot be made where the taxation was done by consent, as there was no exercise of discretion or reasoning by the tax master capable of review, as held in *Njuguna & Partners Advocates v Kenya Power & Lighting Co. Ltd* [2014] eKLR. The applicant has not disputed the retainer; hence, the court should allow the respondent's application for conversion dated 12/5/2025. Filing a separate application instead of responding to the respondent's application violates the principle of orderly procedure. Allowing the current application would cause the respondent serious and irreparable prejudice; therefore, it should be dismissed with costs.

ANALYSIS AND DETERMINATION

4. I have considered the record herein. The main issue to be determined is whether the court should exercise its discretion to extend the time for the applicant to file a reference against the ruling delivered on 27/11/2024.
5. Paragraph 11 of the Advocates Remuneration Order (ARO) outlines the procedure for filing a reference objecting to the decision of the Taxing Master: -

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 which he objects.

2) 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 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.

3) Any person aggrieved by the decision of the judge upon any objection referred to such judge under subparagraph (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.

4) 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 expired. (Emphasis supplied).

6. The court's discretion to extend time was addressed in the case of the County Executive of Kisumu v County Government of Kisumu and 8 Others [2017] eKLR, where the Supreme Court of Kenya stated as follows:

“[23] 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. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as

“the under-lying principles that a Court should consider in exercise of such discretion:

1. 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;

2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

5. Whether there will be any prejudice suffered by the respondents if the extension is granted;

6. Whether the application has been brought without undue delay; and

7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

7. The Court has wide discretionary powers under the Civil Procedure Act and Rules, particularly as outlined in sections 1 (A), 1 (B), 3 (A), and 79 (G), regarding the overriding objective, inherent jurisdiction, and exercising jurisdiction on sufficient cause in cases of this nature for the interest of justice.
8. Paragraph 11 (1) (2) of the Advocates Remuneration Order does not specify the relevant factors that the Court should consider when exercising its discretion on whether or not an extension of time should be granted. Guidance, therefore, is derived from case law, in Paul Wanjohi Mathenge v Duncan Gichane Mathenge [2013] eKLR, where the Court of Appeal, while citing other authorities, observed;

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in 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 and interested parties if the application is granted, and whether the matter raises issues of public importance. In Henry Mukora Mwangi V Charles Gichina Mwangi - Civil Application No. Nai 26 of 2004, this Court held; -

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in Mwangi V Kenya Airways Ltd [2003] KLR 486 in which this Court stated;-Over the years, the Court has, of course set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in Leo Sila Mutiso V Rose Hellen Wangari Mwangi - Civil Application No Nai 255 of 1997(unreported), the Court expressed itself thus; -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reasons for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

9. As stated in the above cases, the duration of the delay and the reasons for failing to meet the timelines are significant factors affecting the Court's discretion.
10. In calculating the length of delay in making the application for an extension of time, the period begins from 27/11/2024, when the bill of costs was taxed by the taxing master, and ends on 8/10/2025, when the aggrieved applicant lodged the current application for an extension. The delay in filing the application was approximately over 10 months. In seeking to balance the interests of the parties, the failure to comply was clearly inordinate.
11. The applicant, in its affidavit, explained the reasons for the delay. The applicant stated that the reason for filing the current application on 8/10/2025 was because its advocate, without its

authority, entered into a consent on the taxation of the respondent's Bill of Costs and subsequently failed to communicate any progress made in the matter, only to become aware of the taxation by consent when served with the application to endorse the Certificate of Costs on 29/8/2025.

12. The record shows that this allegation by the applicant is baseless and intended to deceive the court, as the respondent has provided evidence that after the taxation by consent on 27/11/2024, the applicant made a partial payment of the agreed sums but later applied to settle other agreed bills through instalments, an application which was dismissed.
13. I agree with the respondent that seeking indulgence to clear the balance, as detailed in the correspondence, demonstrates the applicant's full knowledge and acceptance of the consent; therefore, it is estopped from denying it.
14. In *Wilfred Nyaundi Konosi t/a Konosi & Company Advocates v John Lokorio* (2015) eKLR, the Court held that a certificate of costs, resulting from a taxation by consent of both parties, cannot be challenged unless it is first set aside or varied by a court order. My understanding of this decision is that where costs are agreed by consent, the taxing officer simply acts to formalise what the parties have already agreed. Therefore, a reference under Paragraph 11 of the Advocates Remuneration Order, which

applies to challenges of a taxing officer's exercise of discretion, is inadmissible.

15. Therefore, as the motion was based on a consent allegedly obtained through collusion and unethical practices, which I have found to be unfounded, I hereby determine that this application lacks merit. The applicant has not demonstrated that the court should exercise its discretion to extend the time for filing its reference.
16. The conclusion is that I dismiss the application dated 8/10/2025 with costs to the respondents.
17. The orders in this Ruling shall also apply to the other cases in the series, namely, Bungoma Civil Miscellaneous Applications Nos. E043, E044, E045, E046, E047, E049, E050, E051, E052, E053, E054, E055, E060, E061, E100, E0120, E121, E122, E123, E124, E126, E127, E128, E129, E130, E131, E132, E133, E134, E135, E136, E137, E141, E142, E143, E144 & E145 of 2024.
18. It is so Ordered.

**Dated, signed and delivered in Bungoma this 13th Day of
March 2026.**

R. OUGO

JUDGE

In the presence of:

HCCMISC APPLN NO. E042 OF 2024-RULING

Respondent/ Applicant - Absent

**Miss Kerubo h/b for Mr. Ntabo For the Applicant/
Respondent**

Wilkister - C/A

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