

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

PETITION NO. E196 OF 2021

JOHN OUMA MIDEGA.....PETITIONER

VERSUS

KENYA ELECTRICITY GENERATION CO. LTD.....RESPONDENT

RULING

The Respondent filed chamber summons dated 21/10/2025 seeking for an order to vacate and set aside the Ruling and reasons of Hon. Lydia Juma, Deputy Registrar dated 24/9/2025 on items 1 and 2 of the Petitioner’s party – party bill of costs dated 30/7/2024 taxed at Kshs. 3,838,605.00.

That the court be pleased to exercise its discretion and retax items 1 and 2 of the bill of costs aforesaid.

The application is premised on grounds (a) to (s) set out on the face of the application the nub of which is that Hon. Lydia Juma delivered a Ruling taxing the Petitioner’s bill of costs dated 30/7/2024 at Kshs. 3,838,605. That the taxing master exercised her discretion and taxed item 1 (Instruction fees at Kshs. 2,850,000.00 and getting up fees under item 2 of Kshs. 950,000.00).

That this matter being a petition was not as complex as was stated by the taxing master and so grossly misdirected herself in that respect and awarded grossly exaggerated sums.

That the court be pleased to enlarge the time for filing this application, the same having been filed late, since the decision was made on 24/9/2025, the notice of objection was filed on 21/10/2025 and this application was filed on 21/10/2025. The reason for the delay is that the decision was uploaded on 26/9/2025 without notice and the Applicant learnt of the uploaded Ruling on 30/9/2025.

That instructions to challenge the decision was given on 16/10/2025 and 17/10/2025 was declared a public holiday and 20/10/2025 was equally a national holiday and so the earliest the application could be filed was on 21/10/2025.

That there are legitimate reasons for the delay in filing the application and the court should condone it and admit the application for hearing.

That the error by the taxing master in assessing instruction fees had the impact of massively increasing the getting up fees.

The Respondent opposes the application vide replying affidavit of the Respondent/Petitioner who deposes that there is no reference challenging the decision of the taxing officer. That the application is defective having been filed in the suit file. That Applicant ought to have instituted a reference through a miscellaneous suit.

That the application is fatally defective and should be struck out with costs.

That the court lacks jurisdiction to hear the application as it was filed out of time contrary to provision of paragraph 11 (2) of the Advocates (Remuneration) orders 1962.

That the ruling delivered on 24/9/2025 had reasons for the decision and so there was no need to request for reasons for the decision.

That the Applicant had upto 8/10/2025 to lodge the reference which they failed to do. The chamber summons was filed out of time and is time barred.

That Respondent is 'woke up' only after counsel for the Petitioner wrote to them asking for settlement of the certificate of taxation. That the prayer for enlargement of time lacks merit because a separate application seeking leave to file a reference out of time ought to have been filed first and the prayer granted before filing the substantive reference.

That the Respondent's counsel was present when the Ruling was delivered and was therefore aware of the date of the Ruling. That when Ruling was published on CTS on 26/9/2025, both parties could access it.

DETERMINATION

In *Joyce Nsiza v Amunga & Co-Advocates [2019] eKLR*, and *Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd (2) [2000] IEAS*, the court held that:-

“Where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reason simply because of the unfortunate wording of Subrule (2) and Rule 11 of the Advocates Remuneration Order demands so. The said Rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered Ruling.”

Even if the Applicant became aware of the Ruling on 30/9/2025, as he alleges, which could not be true, then Applicant had upto 15/10/2025 to file the reference, which it did not.

That courts have always upheld the timelines provided for challenging the taxing officer’s decision as stated in the case of *Githongori and Harrison Associates Advocates v Ngugi [Environment and Land Miscellaneous (Reforces Application E045 of 2024) [2025] KEELC 516 (KLR)* where the court held;

“The time limit in Rule 11 of the Advocates Remuneration order have been put there for a reason. Failing to adhere with the said time line would mean that the application would be rendered incompetent in the first instance.”

In the case of **Nicholas Kiptoo Arap Korir Sala v Independent Electoral and Boundaries Commission & 6 others [2013] eKLR**, it was held by the Supreme Court that:-

“It ought to be clearly understood that the courts have not belittled the role of procedural rules. It is emphasized that procedural rules are tools designed to facilitate adjudication of disputes; they ensure orderly management of cases. Courts and litigants (and their lawyers) alike are, thus, enjoined to abide strictly by the rules. Parties and lawyers ought to be reminded that the bare invocation of the oxygen principle is not a magic ward that will automatically compel the court to suspend procedural rules.”

Respondent in their submissions while emphasizing the guidelines in Schedule 6(1) (j) of the Advocates (Remuneration Order 2014 as follows:-

“Constitutional petitions and prerogative orders

To present or oppose an application for a Constitutional and Prerogative Orders such fee as the taxing master in the exercise of his discretion and taking into consideration the nature and importance of the petition or application, the complexity of the matter and the difficulty or novelty of the question raised, the amount or value of the subject matter, the time expended by the advocate –

(i) Where the matter is not complex or opposed such sum as may be reasonable but not less than Kshs. 45,000.00.

(ii) Where the matter is opposed and found to satisfy the criteria set out above, such sum as may be reasonable but not less than Kshs. 100,000.00.”

The Applicant did not address the failure to file a reference immediately since reasons for the taxation were already contained in the Ruling and the failure by the Applicant to file an application seeking leave to file a reference before bringing this chamber summons application which has no basis in the Advocates Remuneration Order, 1962.

The court is also well guided by the case of **Joyce Ngige Amuga Co. Advocates v another eKLR** where an application was dismissed for unexplained delay. In this matter the court finds that the reasons given for these delay are not plausible given that counsel for the Applicant was present in court when the Ruling was delivered and the said Ruling had reasons for the taxation in respect of the instruction fees and the getting up fee.

Accordingly, this application fails on all the fronts. It is not a refence as contemplated by the Advocates Remuneration Order; does not provide plausible reasons to allow enlargement of time and no valid reasons to upset the discretion of the taxing master has been provided.

Firstly, the application is struck out for being wrongly filed and out of time. However, even if same was not struck-off, same lacks merit and is dismissed with costs.

Dated at Nairobi this 2nd day of April 2026

Mathews Nduma
JUDGE

Dated, signed and delivered in open court at Nairobi this 22nd day of April 2026

Dr. Gakeri J.
JUDGE

Appearances:

Mr. Githinji for Respondent/Applicant

Mr. Mokaya for Petitioner/Respondent

Mr. Kemboi – Court Assistant