

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC MISC. CASE E 040 OF 2025

NDUBI E MOKUA T/A MOKUA NDUBI & CO. ADVOCATES

APPLICANT

VERSUS

VERONICA WAIRIMU NJUGUNARESPONDENT

RULING

(In respect of the Advocate's application for entry of judgement and the Client's application for extension of time to file an objection/Reference)

Introduction

1. This ruling determines two applications arising from the taxation of an Advocate-Client Bill of Costs dated 30th June 2025. The bill relates to professional legal services rendered by the Advocate/Applicant, Ndubi E Mokua t/a Mokua Ndubi & Co. Advocates, to the Client/Respondent, Veronica Wairimu Njuguna, in Kajiado ELC Case No. 7 of 2022.
2. By the direction of the Court, the two applications, one seeking the entry of judgment and the other seeking an enlargement of time to file an objection—were canvassed and heard concurrently.
3. The first application is the Notice of Motion dated 7th January 2026, brought by the Applicant under Section 51(2) of the Advocates Act and Rule 7 of the Advocates Remuneration Order. The Applicant seeks the following primary orders:

- a. That Judgment be entered in favour of the Applicant against the Respondent for the certified sum of Kshs. 197,707.50 plus interest at the rate of 14% per annum from 30th July 2025 until payment in full.
 - b. That the costs of this application and interest thereon be provided for.
4. The application is grounded on the Supporting Affidavit of Ndubi E Mokuu, sworn on 7th January 2026. The Applicant avers that on 5th December 2025, the Taxing Master taxed the Advocate-Client Bill of Costs and allowed it at Kshs. 197,707.50. The Applicant contends that there is no dispute as to the retainer, the taxed amount has never been set aside, and the time for filing a reference has lapsed. Despite the Respondent's Advocates being served with the Ruling on Taxation on 22nd December 2025, the certified amount remains unpaid.
5. The Respondent opposes this application through a Replying Affidavit sworn on 21st January 2026. The Respondent denies that the Certificate of Taxation was ever validly served upon her or her Advocates, arguing that the timelines for filing a reference had not lawfully commenced. Substantively, the Respondent argues that while the Taxing Master's ruling acknowledged an upfront payment of Kshs. 340,000 made by the Respondent, the final computation failed to reconcile or set off this amount against the taxed costs, thereby exposing her to double payment and unjust enrichment by the Applicant.
6. The second application is the Chamber Summons dated 30th January 2026, filed by the Respondent. The Respondent seeks the following substantive orders: A stay of execution of the Ruling on Taxation delivered on 5th December 2025 and the Certificate of Taxation dated 7th January 2026 pending the determination of the application;

Enlargement of time within which to file a Notice of Objection and/or Reference against the Taxing Officer's decision and in the alternative, an order setting aside or varying the Ruling and/or Certificate of Taxation to the extent that it failed to discount or set off the Kshs. 340,000 already paid by the Respondent.

7. This application is supported by the Affidavit of Veronica Wairimu Njuguna, sworn on 29th January 2026. The Respondent asserts that her Advocates were not admitted into the virtual court session when the ruling was delivered on 5th December 2025. She claims that despite writing to the Court on 10th December 2025 requesting a copy of the ruling, her Advocates did not receive it before closing for the Christmas recess on 16th December 2025. She avers that her Advocates only accessed the ruling on 5th January 2026 via an email sent by the Applicant. She reiterates that the intended reference is purely to cure the patent accounting anomaly resulting from the Taxing Master's failure to deduct the admitted Kshs. 340,000 upfront payment from the final taxed sum.
8. The Applicant opposes the enlargement of time via a Replying Affidavit sworn by Ndubi E Mokuia on 4th March 2026. The Applicant contends that the Respondent's claims of delayed access to the ruling are unfounded, pointing out that the ruling was uploaded to the Judiciary's Case Tracking System (CTS) on 17th December 2025 at 14:23 hours, well within the 14-day window for filing an objection.
9. The Applicant further argues that the intended reference lacks merit because the Taxing Master did, in fact, factor in the Kshs. 340,000 payment by deliberately reducing the Applicant's instruction fees. Consequently, the Applicant urges the Court to dismiss the application for extension of time, maintaining that the Taxing Master committed no error.

Directions

10. The application was canvassed by way of written submissions, the submissions of which have been duly considered in the writing of this ruling.

Issues for Determination

11. Having carefully considered the rival applications, the supporting and opposing affidavits, and the written submissions filed by both parties, I find two issues commending themselves for determination in the following order:

- I. Whether the Respondent has established sufficient cause for the enlargement of time to file an Objection/Reference.***
- II. Whether judgment should be entered in favour of the Applicant pursuant to Section 51(2) of the Advocates Act.***

Analysis and determination

- I. Whether the Respondent has established sufficient cause for the enlargement of time***

12. The Respondent seeks the Court's discretion to enlarge time to file a Reference against the Taxing Master's ruling delivered on 5th December 2025. The power of this Court to extend time is discretionary but must be exercised upon settled principles. As stated by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR*:

"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; a party who seeks extension of time has the burden of laying a basis to the satisfaction of the court; extension of time is a consideration on a case-to-case basis; and where there are no meritorious grounds for extension, the court should not grant it."

13. The Respondent attributes the delay to an inability to access the virtual court on 5th December 2025 and a failure to obtain the ruling before the Christmas recess. However, the record contradicts this claim of "unavailability." The Ruling was uploaded to the Judiciary's Case Tracking System (CTS) on 17th December 2025.

14. Paragraph 11 of the Advocates Remuneration Order (under which the taxation was conducted) provides the strict timeline for objections:

"Any party who is dissatisfied with the decision of the taxing officer as to any item or part of an item contained in a bill of costs taxed by him or as to the amount allowed in respect of any item or part of any item, may, within fourteen days after the date of the decision of the taxing officer, give notice in writing to the taxing officer and to the other party to the taxation of his intention to object to the decision."

15. The Respondent's counsel failed to file the notice of objection within 14 days of the decision. Ignorance of a ruling being uploaded to the portal, when counsel has a duty to track their matters, does not constitute an "excusable mistake." Furthermore, an extension of time will not be granted where the underlying Reference lacks merit. The Respondent contends that the Taxing Master failed to offset the sum of Kshs. 340,000 upfront payment. However, the Taxing Master's ruling at Paragraph 10 explicitly states:

"I therefore tax the instruction fees at Kshs. 100,000/=, which I find to be reasonable, taking into account the services rendered and the sum of Kshs. 340,000/= already paid pursuant to the oral retainer."

16. It is evident the Taxing Master did not ignore the payment but used it as a basis to drastically reduce the instruction fees from the claimed Kshs. 600,000. To grant an

extension of time to argue a point already addressed and settled by the Taxing Master would amount to acting in vain. While at it, I must say that a reference is only allowable to address an error of principle. The court in the case of *First American Bank of Kenya – vs- Shah & Others (2002) EALR 64*, pronounced the principles that may justify the High Court to interfere with the decision of a taxing officer. Ringera –J (as he then was) at Page 69 thereof stated that;

“This court cannot interfere with the taxing officer’s decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle... it would be an error of principle to take into account irrelevant factors or to omit to take into account relevant factors... some of the relevant factors include the nature and importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge...”

17. Consequently, the application for extension of time fails.

II. Whether judgment should be entered in favour of the Applicant

18. The Applicant moves the Court for entry of judgment following the issuance of a Certificate of Taxation. This application is governed by **Section 51(2) of the Advocates Act (Cap 16)**, which provides:

"The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it

thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."

19. The legal requirements for the entry of judgment under this section are clear: There must be a valid Certificate of Taxation; the Certificate must not have been set aside or altered and the retainer must not be in dispute. In the present case, a Certificate of Taxation was duly issued on 7th January 2026 for the sum of Kshs. 197,707.50. As determined in the preceding section of this ruling, the Respondent's application to challenge that taxation was filed out of time and has been dismissed. Therefore, the Certificate remains final and conclusive.

20. Regarding the retainer, the Respondent in her Replying Affidavit does not deny the Advocate-Client relationship; she only disputes the final accounting. In ***Lubulellah & Associates Advocates v Desmante Kenya Limited [2017] eKLR***, the court held:

"The law is that where a retainer is not in dispute and there is no reference against the taxing officer's certificate, the Advocate is entitled to have judgment entered for the amount on the certificate."

21. The Applicant has satisfied all statutory conditions. There is no legal impediment to the entry of judgment. Furthermore, regarding interest, **Rule 7 of the Advocates Remuneration Order** stipulates:

"An advocate may charge interest at 14 per cent per annum on his disbursements and costs from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised in the bill of costs."

22. The Applicant's bill was dated 30th June 2025, and interest is sought from 30th July 2025, which is consistent with the one-month statutory buffer. Accordingly, this court makes the following orders:

- a. The Respondent's Chamber Summons dated 30th January 2026 is hereby **DISMISSED** for lack of merit with costs to the Advocate.
- b. The Applicant's Notice of Motion dated 7th January 2026 is hereby **ALLOWED**.
- c. Judgment is entered in favour of the Applicant against the Respondent for the certified sum of **Kshs. 197,707.50** with interest at the rate of **14% per annum** from 30th July 2025 until payment in full.
- d. The Advocate/Applicant is awarded the costs of both applications.

Orders accordingly.

Dated, Signed and Delivered Virtually this 30th Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Mokuu for the Advocate/Applicant

Mr. Kioko for the Client/Respondent

Court Assistant: Alex

M.D. MWANGI
JUDGE