



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYERI**  
**ELC SUIT NO. 415 OF 2014**

**BENSON IRUNGU MWANGI.....APPLICANT**

**-VERSUS-**

**NYAMBURA NJUGUNA.....RESPONDENT**

**RULING**

1. Before the Court is an application under Chamber Summons dated August 19, 2025, seeking the following orders:

**1) Spent.**

**2) This Court be pleased to grant leave to the applicant to file a reference outside the prescribed time in objection to the taxing officer's ruling delivered on 12th July 2023.**

**3) Pending the hearing and determination of this application, there shall be an order staying the execution of the Ruling on taxation delivered on July 12th, 2023.**

#### **4) The costs of this application will be in the cause.**

- 1.** The application is supported by the affidavit of the applicant, who stated that the taxing master issued a ruling taxing the plaintiff's party and party costs at Kshs. 796,225/-, which he argues was excessive.
- 2.** The applicant stated that he instructed his advocate to file a reference against the decision, but Counsel failed to do so in a timely manner. He believed that Counsel was preparing to file a reference until he received a notice to show cause for the execution of the bill of costs.
- 3.** The applicant also stated that granting the application would not prejudice the respondent, who can be compensated with damages. Conversely, he would face prejudice if imprisoned in a civil jail, as he is unable to pay the decretal amount due to his age and lack of income.
- 4.** His view is that there was an error in principle in the taxing master's decision that the right Remuneration Order was not applied and that the bill of costs was grossly exaggerated, stating that his application is merited.

#### **The Respondent's replying affidavit**

5. The respondent swore an affidavit in response to the application on July 6, 2023, and stated that the impugned ruling on taxation was delivered over two years ago, asserting that the applicant had a duty to follow up on the progress of his case.
6. Further, she deposed that the present advocates are not properly on record and have not complied with Order 9 Rule 9 of the Civil Procedure Rules.
7. The respondent contends that the Bill of costs was drafted with care and reference to the law and that the alleged errors of principle by the taxing master have not been disclosed, as well as why the taxed sum is excessive.
8. It is the respondent's position that litigation must come to an end, and that it cannot be conducted on a party's pleasure since that is inequitable.

**The Applicant's supplementary affidavit.**

9. The applicant swore an additional affidavit on December 17, 2025, stating that his advocates are properly on record because the previous firm ceased to be on record when he served them with a Notice of Intent to Act in Person dated

July 6, 2023. He clarified that there has been no change of advocates, only the appointment of additional advocates.

**10.** He added that he had always kept in contact with the said former advocates and sincerely believed that the reference had been filed after paying the required fees. He stated that he was diligent at all times but blamed the delay on his former advocates.

**11.** Regarding the taxation of the party and party bill of costs, the applicant stated that the taxing master did not provide reasons to justify the award, which is a legal requirement, and failed to comply with the Advocates' Remuneration Order in this regard. The applicant also stated that the matter was straightforward and did not involve complex issues, particularly since the land's value had not been disclosed.

**Applicant's written submissions.**

**12.** Counsel for the Applicant argued that the Court has the discretion to grant an extension of time to file an appeal and relied on Sections 95 of the Civil Procedure Act, Section 63(e) of the Civil Procedure Act, Section 59 of the

Interpretation of the General Provisions Act (Cap 2), Article 159(2)(d) of the Constitution, and Order 50 Rule 6 of the Civil Procedure Rules.

**13.** Counsel also relied on the authority in the case of **Republic v. Speaker of Nairobi City County Assembly & another Ex parte Evans Kidero [2017] eKLR.**

**14.** The applicant asserts that the delay was adequately justified as an error attributable to the inadvertence of counsel, and therefore, should be excused and not serve as grounds to disqualify the ex parte applicants from the seat of justice. In support of this position, they cited the cases of **Philip Chemwolo & Another v. Augustine Kubende [1986] eKLR** and **Gideon Mose Onchwati v. Kenya Oil Co. Ltd & Another [2017] eKLR.**

**15.** On the merit of the reference, it is submitted that the Ruling on record cannot be allowed to stand, as it goes against established precedents regarding the taxation of bills of costs. The taxing master made a clear error in principle, warranting its reversal. They relied on the cases of:

**Joreth Ltd v. Kigano & Associates Civil Appeal No. 66 of 1999 [2002] 1 EA 92, [2002] eKLR; First American Bank of Kenya v. Shah and others [2002] E.A 64; Green Hills Investments Limited v. China National Complete Plant Export Corporation; Peter Kamau Ikigu v. Barclays Bank of Kenya Limited & another [2020] eKLR; Republic v. Medical Practitioners & Dentist Board & 2 others Ex parte: Mary A. Omamo-Nyamogo [2017] eKLR and Opa Pharmacy Ltd v. Howse & McGeorge Ltd, Kampala HCMA No. 13 of 1970 (HCU) [1972] EA 233.**

**16.** Counsel for the applicant argued that the taxing master made an error by not providing an explanation for allowing the bill as drawn, despite the bill being clearly excessive and not proportional to the work performed.

### **Respondent's written submissions**

**17.** The respondent's counsel contended that the applicant's advocate is not properly on record pursuant to Order 9, Rule 9 of the Civil Procedure Rules, as during the trial and up to the judgment, Waiganjo Gichuki and Co.

Advocates represented the applicant. There is no evidence of consent for the applicant to act in person, and none was attached to the application. Furthermore, Mindo & Co. Advocates joined the case at a later stage by way of an appointment dated 15 May 2023, without prior permission from the Court. They relied on the ruling in the case of **Equator Bottlers Limited v. Achieng (Civil Appeal E033 of 2024) [2025] KEHC 12662 (KLR)** to substantiate this matter.

**18.** Secondly, it is argued that the applicant is responsible for an unjustified and unexplained delay, since the ruling on costs was issued on July 12, 2023. The current application is dated August 19, 2025, which represents a delay of 2 years, 1 month, and 7 days, and is therefore excessive late. The respondent argues that the applicant had a duty to act in his case and to follow up consistently. See **Alice Mumbi Nganga v. Danson Chege Nganga & Another [2006] eKLR**. It is noted that the applicant acted only after being served with a Notice to Show Cause.

- 19.** The third point that Counsel for the respondent raised is that there is no request for an extension of time to notify the taxing officer to provide the applicant with reasons for the taxation, as required under Rule 11(1) of the Advocates Remuneration Order, and that they have only sought permission to file a reference.
- 20.** Counsel also denied any alleged errors of principle in the taxation of the bill of costs by the taxing master and requested that the current application be dismissed.

### **Analysis and determination**

- 21.** From the materials and submissions presented before me by the parties, the issues for this Court to determine are whether to grant an extension of time to file a reference out of time and who should bear the costs of this application.
- 22.** The applicant hereby requests the Court to exercise its discretion to extend the time for filing their reference against the taxing master's ruling on the plaintiffs' party and party bill of costs, which was delivered on July 12, 2023.
- 23.** Paragraph 11(1) of the Advocates (Remuneration) Order stipulates that:

***“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.”***

**24.** The Court possesses the authority to extend the fourteen-day period within which to file a reference as specified in paragraph 11(4), which states that:

***“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 already expired.”***

**25.** The above proviso was, however, not invoked. Instead, the applicant relied on the provision of Order 50 Rule 6 of the Civil Procedure Rules, which states that:

***“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.”*

**26.** The extension of time constitutes a discretionary authority of the Court, which evaluates each case individually to determine its merit. The applicant cited the case of **Republic v. Speaker of Nairobi City County Assembly & another Ex parte Evans Kidero [2017] KEHC 6101 (KLR)**, where the Court held that:

*“what this Court needs to satisfy itself is that there is no demonstrable prejudice caused to the adverse party because of delay and whether refusal to enlarge time would occasion hardship and result in an injustice to the applicant. In so doing, this Court’s inherent discretion is not fettered to ensure that justice is done to the parties since there is no prohibition for enlargement of time.”*

**27.** The Supreme Court, in the case of **Salat v. Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)**, outlined the principles to be followed when exercising the discretionary power to extend time:

*“Extension of time being a creature of equity, one can only enjoy it if [one] acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that [one] was not at fault so as to let time lapse. Extension of time is not a right of a litigant against a Court, but a discretionary power of the Courts which litigants have to lay a basis [for] where they seek grant of it..... This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in the 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 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. where there is [good] 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, the public interest should be a consideration for extending time.”***

**28.** In the present case, the impugned ruling was issued by the taxing master on July 12, 2023. This application is dated August 19, 2025, more than two years after the ruling was issued. In my view, this represents an inordinate delay.

**29.** The applicant's reason for the delay is that he instructed his former counsel to file a reference against the ruling on his behalf, but counsel failed to do so despite his

follow-up. In my view, this is not a sufficient explanation, as he could not have been waiting for two years for counsel to file the reference without taking any action himself, such as instructing new counsel. It appears that the applicant was jolted back to the reality of this case by the Notice to Show Cause why execution should not issue.

**30.** Every litigant has a duty to follow up on their case and cannot blame all inadvertence on their counsel. The respondent relied on the holding in the case of **Alice Mumbi Nganga v. Danson Chege Nganga & Another [2006] eKLR**, where the Court observed that:

*“In the instant case, the Plaintiffs/Applicants were not vigilant in following up on their case. They left everything to their lawyer and waited for their lawyer to give them updates. They ought to have monitored the progress of their case from the time of commencement as it is not enough to say that their lawyer was supposed to keep them updated. Every litigant has a duty not only to themselves but also to the Court to ensure that their matters get getting prosecuted.”*

**31.** Furthermore, the decree holder/respondent argued that the applicant's Advocate is improperly on record according to the provision of Order 9 rule 9 of the Civil Procedure Rules, which states that:

***“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—***

***(a) upon an application with notice to all the parties; or***

***(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”***

**32.** The applicant submitted a Notice of Intention to act in person on July 6, 2023. Subsequently, he submitted a notice of withdrawal concerning his former legal representatives on August 4, 2023. There is no evidence indicating that the aforementioned intention to act in person was officially filed with the Court or undertaken with the consent of his previous legal representatives, Ms. Waiganjo Gichuki & Co.

Advocates, as mandated by law. The same deficiency applies to the Notice of Appointment of his current legal representatives, Ms. Bikundo Associates & Co. Advocates, who have filed this application.

33. Based on the foregoing, the current application lacks merit because it is clearly late, and the Advocates' firm that submitted it is not properly on record. It is dismissed with costs.

**Dated, signed, and electronically delivered in Nyeri on this 9th day of April, 2026.**

**E. K. MAKORI**

**JUDGE**

**In the presence of:**

**Ms. Waweru for the Applicant**

**Mr. Mbutia for the Respondent**

**Kendi: Court Assistant**