



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Bernard Odero & Company Advocates v Simiyu (Miscellaneous Application  
E216 of 2024) [2025] KEELRC 1009 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1009 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E216 OF 2024**

**SC RUTTO, J  
MARCH 28, 2025**

**BETWEEN**

**BERNARD ODERO & COMPANY ADVOCATES ..... ADVOCATE**

**AND**

**MERIT WAMBATI SIMIYU ..... CLIENT**

**RULING**

1. Before this Court for determination is the Client/Applicant's Chamber Summons dated 3<sup>rd</sup> December 2024, expressed to be brought under Rule 11 of the *Advocates Remuneration Order*, Article 50 of the *Constitution* of Kenya, and all enabling provisions of the law.
2. The Client/Applicant has sought the following orders:
  1. Spent.
  2. Spent.
  3. The Court be pleased to enlarge and/or extend time within which the Applicant can file a reference against the Ruling of the Taxing master delivered on 24<sup>th</sup> September, 2024.
  4. The Ruling of the Taxing master on the bill of costs delivered on 24<sup>th</sup> September, 2024 be set aside and/or be varied.
  5. The costs of this application be provided for.
3. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of Merit Wambati Simiyu, the Client/Applicant herein. Grounds in support of the Application are that a Ruling in relation to an Advocate-Client Bill of Costs dated 22<sup>nd</sup> July 2024 was delivered on 24<sup>th</sup> September 2024 for a sum of Kshs. 661,351.01/= in favour of the Advocate/Respondent as against the Client/Applicant.



4. That the Client/Applicant was neither served with the Bill of Costs nor the Taxation Notice.
5. It is further averred that the Client/Applicant had paid the Respondent Kshs.130,000/= as legal fees that was not considered by the taxing master during the taxation.
6. Opposing the Application, the Advocate/Respondent filed a Replying Affidavit sworn on 30<sup>th</sup> January 2025 by Bernard Odero Okello, who has described himself as an Advocate of the High Court and the proprietor of Bernard Odero & Co. Advocates, the Respondent herein.
7. Mr. Odero deposes that the matter was scheduled for the first mention on 3<sup>rd</sup> September 2024 to confirm service of the Bill of Costs dated 22<sup>nd</sup> July 2024, upon the Client/Applicant.
8. That the Advocate/Respondent proceeded to serve the Bill of Costs and Taxation Notice upon the Client/Applicant via his email address, mwambati@yahoo.com.
9. According to Mr. Odero, the Client/Applicant used the aforementioned email address as his primary email to formally instruct the Advocate/Respondent and used it throughout his dispute before the Court.
10. Mr. Odero contends that the Client/Applicant willfully ignored and/or failed to attend Court on the slated taxation date despite being notified of the same.
11. That on 3<sup>rd</sup> September 2024 when the matter was scheduled to come up for taxation, the same did not proceed as the Court was not sitting. Consequently, a fresh taxation date for 5<sup>th</sup> September 2024 was issued by the Court.
12. That on 5<sup>th</sup> September 2024, when the matter came up again for taxation, the Court directed that the matter be scheduled for ruling on 24<sup>th</sup> September 2024. That communication was yet again promptly relayed to the Client/Applicant via his email address.
13. That on 24<sup>th</sup> September 2024, the Client/Applicant did not attend Court despite being served with the notice. Consequently, the Court delivered its Ruling.
14. Mr. Odero deposes that the Advocate/Respondent filed an application to adopt the Certificate of Costs as Judgment of the Court. That it is only upon receipt of aforementioned application and Certificate of Taxation, that the Respondent saw the need of seeking this Court's intervention.
15. It is Mr. Odero's view that the Bill of Costs as had been drawn by the Advocate/Respondent is regular, and the decision of the Taxing Master be upheld as the requisite procedure was followed to the letter.
16. That it is a matter of judicial notoriety that electronic service is permitted via Order 5 Rule 22B of the *Civil Procedure (Amendment) Rules, 2010* and as such service via email is sufficient.
17. Mr. Odero further contends that the Client/Applicant has always been evasive and has never been willing at any point to settle the amounts owed to the Advocate/Respondent and the only recourse the Advocate has ever had was a pronouncement by this Court.
18. That setting aside the decision of the Taxing Master and staying execution of the same would be greatly prejudicial to the Advocate/Respondent who has and continues to suffer economic inconvenience in the hands of the Client/Applicant who has no intention to settle the Advocate/Respondent's fees.
19. In response to the Advocate's Replying Affidavit, the Client/Applicant filed a Further Affidavit dated 7<sup>th</sup> February 2025 in which he deposes that he rarely uses his email indicated in the Advocate's annexures and that he never acknowledged the said emails because he never saw them in good time.



20. He further avers that the Advocate/Respondent had his phone number, which he had used to pay legal fees through Mpesa, hence out of courtesy, he could have served him using alternative means like WhatsApp or text or even notified him of the ongoing taxation.
21. The Client/Applicant further avers that the Advocate/Respondent had filed another application and/or Bill of Costs against him that is related to this matter, hence causing confusion. He adds that this was even pointed out by the Court in its Ruling during the taxation.
22. In the Applicant's view, the Respondent's Bill of Costs was not regular, and the decision of the Taxing Master should not be upheld because the taxation was based on wrong principles of law. That further, the sum awarded in the Ruling after the taxation is excessive.

### **Submissions**

23. Pursuant to the directions issued by the Court on 18<sup>th</sup> December 2024, the Application was canvassed by way of written submissions. Both parties complied and the Court has given due consideration to the said submissions.

### **Analysis and Determination**

24. Having considered the Chamber Summons, the Replying Affidavit by the Advocate/Respondent, the Client/Applicant's Further Affidavit as well as the rival submissions, it is evident that what arises for determination at this point, is whether time can be extended for the Client/Applicant to file a reference against the Ruling of the Taxing Master delivered on 24<sup>th</sup> September 2024.
25. Rule 11(4) of the *Advocates Remuneration Order* provides that the High Court shall have the discretion to enlarge the time for lodging a reference notwithstanding the expiry of the 14 day period prescribed for the reference from the taxing master's decision on costs. Like all Judicial discretions, the discretion by the Court is to be exercised judicially and not whimsically or idiosyncratically, the main concern of the court being to do justice to the parties.
26. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR enunciated the principles that govern the exercise of discretion in applications for extension of time as follows: -

“The underlying principles a court should consider in exercise of such discretion should include: -

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondent if the extension is granted;



f. Whether the application has been brought without undue delay.

27. In the present case, the Bill of Costs filed by the Advocate/Respondent was taxed vide a Ruling dated 24<sup>th</sup> September 2024. Consequently, a Certificate of Taxation was issued on 8<sup>th</sup> November 2024. The Client/Applicant moved this Court vide the instant Chamber Summons on 6<sup>th</sup> December 2024. The Court does not think the delay is inordinate. This, therefore, takes me to the next issue, which is whether the Client/Applicant has established a reasonable reason for the delay.
28. The Client/Applicant states that he was neither served with the Bill of Costs nor the Taxation Notice. In this regard, he has stated that he rarely uses the email address that was used by the Advocate/Respondent for purposes of service in the taxation proceedings. That as such, he did not see the email in good time and was not aware of the taxation. The Client/Applicant has further averred that had he seen the emails, he would have responded to the Bill of Costs and attended Court in person or instructed an advocate to act on his behalf.
29. Despite the assertions by the Client/Applicant, it is notable that he has not indicated how and when he came to be aware of the Ruling on Taxation and the Certificate of Costs.
30. Nonetheless, the Court is inclined to give the Applicant the benefit of doubt, noting that the delay is not inordinate.
31. The other consideration to be made by the court is whether there will be any prejudice suffered by the Advocate/Respondent if the extension is granted. In this case, the Advocate/Respondent has not demonstrated that he will be prejudiced if the extension sought is granted. In any event, the Advocate/Respondent can adequately be compensated in costs for the delay in payment of his dues.
32. In the circumstances, the Court is persuaded that this is an appropriate case for the exercise of its discretion to extend time as prayed. To this end, the Chamber Summons dated 3<sup>rd</sup> December 2024 is allowed in terms of prayer 3, and the Client/Applicant is hereby granted leave of 7 days from the date of the delivery of this Ruling to file and serve a reference.
33. There will be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

Ms. Wanyama for the Client/Applicant

Ms. Shamalla instructed by Mr. Odero for the Respondent

Millicent Court Assistant

order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article



159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

