



**Mbiu v Kenyatta National Hospital (Anti Corruption and Economics  
Crime Miscellaneous Application E010 of 2025) [2025] KEHC 3756 (KLR)  
(Anti-Corruption and Economic Crimes) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3756 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI CORRUPTION AND ECONOMICS CRIME  
MISCELLANEOUS APPLICATION E010 OF 2025**

**LM NJUGUNA, J**

**MARCH 26, 2025**

**BETWEEN**

**ERICK NGUKU MBIU ..... APPLICANT**

**AND**

**KENYATTA NATIONAL HOSPITAL ..... RESPONDENT**

**RULING**

1. What is before the court for determination is the chamber summons dated the 17<sup>th</sup> day of February 2025. It is brought under Rules 2, 11(1), (2) and (4) of the Advocates (Remuneration) Order and Section 3A of the *Civil Procedure Act* seeking the following orders: -
  1. That the decision of the court delivered on 29<sup>th</sup> January 2025 in so far as the same relates to the reasoning and determination pertaining to the Taxation of the Interested Party Bill of Costs dated 7<sup>th</sup> October 2024 be set aside.
  2. That this Honourable court be pleased to extend time and grant leave to the Applicant to lodge a Reference out of time, against the Ruling delivered on 29<sup>th</sup> January, 2025 in Civil Application No. E002 of 2024.
  3. That the decision of the Taxing Master delivered on the 29<sup>th</sup> January 2025 in relation to the Taxation of the Bill of Costs dated 7<sup>th</sup> October 2024 be set aside.
  4. That the Honourable court exercises its inherent jurisdiction and be pleased to reassess and re-tax the bill of costs dated 7<sup>th</sup> October 2024 afresh and or make such other orders as regards to the bill of costs in issue.



5. That the costs of this application be borne by the Respondent.
2. The application is premised on the grounds set out on the body of the same and it is supported by the annexed affidavit sworn on the 17<sup>th</sup> February, 2025.
3. The subject of this application is the ruling delivered on the 29<sup>th</sup> January, 2025 in Civil Application No. E002 of 2024 (Assets Recovery Agency Vs Escobar Kenya Limited & Eric Nguku Mbiu) by the Taxing Master, in relation to the Bill of Costs dated the 7<sup>th</sup> October, 2025.
4. The Applicant herein avers that the Taxing Master erred in law and in fact by taxing the bill of Costs at the colossal sum of Kenya shillings six Hundred and forty-five thousand nine hundred and fifty-four and point zero five cents (Kshs. 645,954.05/=), an amount that does not coincide with those provided for in the Advocates Remuneration Order (2014).
5. The Applicant also faulted the Taxing Master for including the Interested Party while taxing the Party & Party Bill of Costs and failing to consider the 1<sup>st</sup> and 2<sup>nd</sup> Applicant's submissions on record.
6. The Applicant averred that the delay in filing a reference was occasioned by his Counsel who was engaged in a hearing for a whole week in Mombasa High Court – ELCC 2/2021 and by the time his Counsel was returning to Nairobi, time within which to file a reference had already lapsed. He urged the court not to visit upon him mistake of his Counsel.
7. The Respondent did not file any response to the application despite service having been effected upon him.
8. The Applicant filed skeleton submissions dated the 14<sup>th</sup> March 2025 in which he stated that failure to file a reference within the prescribed period was neither intentional nor deliberate but arose from an inadvertent miscalculation of time by his Advocate who was handling the matter. He submitted that the court has the power to grant the orders sought herein, in the interest of justice and/or for the ends of justice.
9. Reliance was also placed on Article 50(1) of the Constitution of Kenya (2010) which underpins fairness and right to be heard.
10. The court has considered the application, the supporting affidavit and the submissions by the Applicant.
11. The Applicant herein has sought among other orders; that this Honourable court be pleased to extend time and grant leave to the Applicant to lodge Reference out of time against the ruling delivered on the 29<sup>th</sup> January 2025 in E002/2024.
12. Order 50(6) of the Civil Procedure Rules has donated unfettered discretion to the courts to enlarge time to do any particular act. It reads:-

“Where a limited time has been fixed for doing any act or taking any proceedings under these rules or by summary notice or by an 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 therein shall be borne by the parties making such application.”



13. In an application for extension of time, like the one before the court, the Applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause and giving a full, detailed and accurate account of the causes of the delay. In the end the explanation must be reasonable enough to excuse the default. Equally important is that the application must be filed without undue delay and/or as soon as an Applicant becomes aware of the need to do so.
14. In this case, the reason for the delay as explained by the Applicant was due to a mistake by his Counsel who attended a matter in Mombasa for a week and by the time he was returning to Nairobi, time within which to file the reference had lapsed. Courts have severally held that mistakes of Counsel should not be visited on an innocent client. See the case of *Kariuki Vs Wangechi & 7 others* (Civil Application number E250/2023) and Misc. Application E009/2022. However, it should be noted that a client also has a duty to follow up on his case with his lawyer to avoid a situation whereby he could have salvaged the situation in a case where his Advocate has delayed in taking action, by changing an advocate.
15. In the case herein, the court is prepared to give the Applicant a benefit of doubt and admit the reference out of time. The same is hereby admitted.
16. Having admitted the reference, I now proceed to consider the merits of the same. The gravamen of the Applicant's Chamber Summons is that the Interested Party in HCACEC E002/2024 was not the rightful party that should claim Party and Party Costs.
17. The principles applicable when the High court is invited to interfere with a Taxing Master's decision were espoused by G.V. Odunga J (as he then was) in the case of *Republic VS Competition Authority ex parte Ukwala Supermarket Limited & Another* (2017) eKLR as hereunder: -
  1. The court cannot interfere with the taxing officer's decision unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle.
  2. It would be an error of principle to take into account irrelevant facts or to consider relevant factors and according to the order itself, some of the relevant factors to be taken into account include the nature and the 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.
  3. If the court considers that the decision of the Taxing Master discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the Judge is satisfied that the error cannot materially have affected the assessment and the court is not entitled to upset a taxation because in its opinion, the amount awarded was high.
  4. It is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reductions is discretionary.
  5. The Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it.
  6. The full instructions fees to defend a suit are earned the moment a defence has been filed and the subsequent progress of the matter is irrelevant to that item of fees.
  7. The mere fact that the defendant does research before filing a defence and then puts a defence informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such



unfamiliarity should not be turned into an advantage against the adversary. See the case of First American Bank of Kenya vs Shah and Others 1 EA 64.

18. The court has perused the proceedings in HCACEC Misc. E002/2024 and the judgment that was delivered on the 18<sup>th</sup> July 2024. I note that the Originating Motion was filed on the 16<sup>th</sup> January 2024 by the Assets Recovery Agency against Escobar Kenya Limited & Erick Nguku Mbiu. It was first mentioned in court on the 5<sup>th</sup> February 2024 and by then, the Interested Party had already filed its application for joinder dated the 2<sup>nd</sup> February 2024 and the same was allowed on the 24<sup>th</sup> April 2024, by Consent of the parties.
19. That upon the Interested Party joining the suit, the court gave directions on filing of submissions on the main Originating Motion and the Interested Party's remaining prayers after the prayer for joinder was allowed by consent of the parties. The parties complied with the court's directions on filing of submissions and eventually the court delivered its judgment on the 18<sup>th</sup> July 2024.
20. In paragraph 52 of the Judgment the court stated: -

“As to the costs of the suit and the Notice of Motion the order that commends itself to me is that the same shall be borne by the Respondents.”
21. Without being seen to be interpreting the judgment of the learned Judge, the court awarded the costs of the suit and the Notice of Motion and the same was to be borne by the Respondents which means that costs were awarded to both the Applicant and the Interested Party as the successful parties in the suit. I would like also to add that the Judge was very specific that the court awarded costs of the suit, and the Notice of Motion and the only other parties that participated in the proceedings were the Applicant and the Interested Parties.
22. This order by the Learned Judge has not been challenged by the Applicant herein and therefore this court would not have any reason to deviate from it.
23. I have also perused the Ruling of the Taxing Master on the Bill of Costs and I note that this issue was raised before that court and the learned Taxing Master effectively addressed it and I have no reason to interfere with her finding in that regard.
24. The Applicant herein has not satisfied this court that he is deserving of the orders that he has sought in this reference.
25. In the end, I find that the Chamber summons dated the 17<sup>th</sup> February 2025 has no merits and it is hereby dismissed with costs.
26. It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF MARCH 2025.**

.....

**L.M. NJUGUNA**

**JUDGE**

In the presence of

Miss Taank for the Applicant

Miss Mwachoni holding brief Mr. Anami for the Respondent

Court Assistant – Adan

