



**Atim Apuun and Company Advocates v Ndavu (Commercial Case E885 of 2021)
[2025] KEHC 11410 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E885 OF 2021**

PM MULWA, J

JULY 31, 2025

BETWEEN

ATIM APUUN AND COMPANY ADVOCATES ADVOCATE

AND

PETER MUSYOKA NDAVU CLIENT

RULING

Introduction

1. By a Chamber Summons dated 28th March 2024 the Applicant sought an order to enlarge time within which it ought to have filed a notice of objection to taxation respecting the Taxing Master's ruling 28th July 2023. The Applicant also sought, in the alternative, the Taxing Master's ruling of 28th July 2023 be deemed to have been delivered on 14th March 2024.
2. In the grounds in support of its application, the Applicant claimed that the Taxing Master's ruling of 28th July 2023 was delivered without notice to and in the absence of the parties herein, and neither was it made accessible on the e-filing portal. That multiple attempts were made to get a copy of the ruling, which only bore fruit on 14th March 2024, long after the lapse of the period prescribed for the lodging of objection to taxation. The Applicant contends that failure to lodge a notice of objection to taxation was inadvertent and the orders sought ought to be granted.
3. The Respondent opposed the application through the grounds of opposition dated 7th July 2024 wherein he asserts that the application is founded on dishonesty, is bad in law and is incurably defective on account of the Applicant's laxity, since parties had received message notifications from the judiciary. The Respondent further argues that, indeed after the Taxing Master delivered her ruling, the Applicant went ahead to file supplementary documents and made allegations of interest against the Court.



4. The application was heard by way of written submissions. The Applicant filed submissions dated 20th August 2024, while the Respondent filed his submissions dated 25th November 2024.

Analysis and determination

5. I have carefully considered the rival arguments presented by the parties herein, the authorities cited together with the pleadings. The main issue for determination is; whether the Applicant is entitled to orders for enlargement of time within which to file a notice of objection.
6. Paragraph 11 of the *Advocates Remuneration Order* provides as follows:
 1. 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.
 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.
 3. ...
 4. 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.
7. The discretion to extend/or otherwise enlarge time is a judicial one, to be exercised judiciously and based on established principles. It is incumbent upon the Applicant to explain the reasons for delay in taking the step, which necessitated the application for extension and/or enlargement.
8. In *Stanley Kaboro Mwangi & 2 Others v Kanyamwi Trading Company Limited* [2015] eKLR the court was of the view that:

“A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercised.”
9. It is undisputed that the Applicant was served with the Bill of Costs and the Notice of Taxation, as per the procedural requirements. The Taxing Master delivered her ruling on 28th July 2023.
10. The Applicant asserts that the Taxing Master’s ruling was delivered without notice and in the absence of parties. I have had the chance to look at the physical record as well as the Case Tracking System (CTS) as to the progression of this case. The record shows parties were all present in court on 28th March 2023 and ruling date set for 5th July 2023, but then delivered on 28th July 2023. There are no proceedings to indicate as to when the date of ruling was changed. On the other hand, the CTS indicates a mention of 5th July 2023 during which a ruling date of 27th July 2023 was given. There is indeed lack of specificity and clarity and this raises concerns about the accuracy of the CTS and the physical court record.
11. The Applicant contends that while it learnt of the delivery of the ruling by the Taxing Master on 21st August 2023, a copy of the same was not available until 14th March 2024, and this despite multiple



follow-up efforts. Various correspondence to the Deputy Registrar of the court, in late 2023 and early 2024, requesting for the ruling elicited no response.

12. This explanation by the Applicant, together with the attendant lack of clarity and specificity in capturing the case progression offers an explanation which is not, on its face, implausible or contrived. The Court is mindful of the holding in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, where it was stated that the Court's discretion in matters extension of time is unfettered, provided that the applicant offers a reasonable explanation.
13. I am satisfied that the Applicant demonstrated diligence in pursuing the ruling of the Taxing Master but unfortunately the same was only available long after the lapse of the time prescribed to file a notice of objection to taxation.
14. Given the foregoing, I find that the Applicant has established sufficient cause for granting of the orders sought. The discretion of the Court is therefore properly and judiciously invoked. The upshot is that the Chamber Summons application dated 28th March 2024, is merited and I allow the same. The Advocate/Applicant to file and serve notice of objection to taxation within 14 days from the date of this ruling. Costs of this application shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Ajwang for Advocate/Applicant

Mr. Mukungu for Client/Respondent

Court Assistant: Carlos

