



**Woodley Residents Welfare Association & 4 others v County Government of Nairobi
& 2 others; Kenya National Human Rights Commission & 3 others (Interested Parties)
(Environment & Land Petition 1 of 2024) [2025] KEELC 3497 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3497 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 1 OF 2024**

**JG KEMEL, J
APRIL 30, 2025**

BETWEEN

**WOODLEY RESIDENTS WELFARE ASSOCIATION 1ST PETITIONER
WANJA KIMANI 2ND PETITIONER
PETER NGATIA 3RD PETITIONER
JOHN MUGWE 4TH PETITIONER
SAMSON MUGACHA MWANGI 5TH PETITIONER**

AND

**THE COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT
MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT 3RD
RESPONDENT**

AND

**KENYA NATIONAL HUMAN RIGHTS COMMISSION ... INTERESTED PARTY
KENYA CIVIL AVIATION AUTHORITY INTERESTED PARTY
NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY INTERESTED PARTY
AFRICA REIT LIMITED INTERESTED PARTY**



RULING

(In respect of the 3rd Petitioner's application dated 12/11/ 2024

1. What is before Court for determination is the 3rd Petitioner's Notice of Motion application dated the 12/11/2024. The application is expressed to be filed under the provisions of Sections 1A,1B and 6 of the *Civil Procedure Act*, Order 42 Rule 6 & Order 51 of the Civil Procedure Rules. The Applicant substantively seeks the following orders:
 - a. That this Honourable Court be pleased to stay execution of the order dated 7/10/2024 with regard to recovery of the costs awarded to the 1st Respondent and 4th Interested Party and stay further proceedings in particular the taxation of the party and party Bill of Costs dated 14/10/2024 and 11/11/2024 pending the hearing and determination of the intended appeal.
 - b. That costs of this application be in the cause.
2. The application is based on the grounds on the face of it and further supported by the Applicant's Affidavit sworn on even dates. The Applicant avers that vide the Ruling delivered on 7/10/2024, the Court struck out their Petition by allowing the 1st Respondent's application and the 4th Interested Party's Preliminary Objection. Being dissatisfied with the said decision, they have preferred an appeal against the said Ruling by filing a Notice of Appeal and are in the process of preparing a Memorandum of Appeal.
3. The Applicant avers that the 1st Respondent and 4th Interested Party have since filed Party and Party Bills of Costs dated 14/10/2024 and 11/11/2024 respectively and which Bills are scheduled for taxation. That having preferred an appeal against the Ruling of the Court dated 7/10/2024 which includes costs granted to the 1st Respondent and 4th Interested Party, it is in the interest of justice that further proceedings are stayed to allow them to prosecute their appeal. He further argues that the appeal will be rendered nugatory if the taxation proceedings continue and conclude before the determination of the appeal.
4. He argues that it is only fair and just that the taxation proceedings in this matter be stayed and await the decision of the Court of Appeal. He contends that he stands to be prejudiced if the appeal is rendered meaningless by dint of continued proceedings.
5. The application is opposed by the 1st Respondent and the 4th Interested Party.

1st Respondent's Grounds of Opposition

6. The 1st Respondent opposed the application vide the grounds of opposition dated 20/01/2025. In summary, the grounds in opposition to the application are that; the Appeal was filed out of time without leave and that the Draft Memorandum of Appeal does not raise any arguable grounds of appeal. The 1st Respondent contends that no reasonable circumstances have been raised to warrant a stay of taxation proceedings.
7. The 1st Respondent contends that the Applicant has not offered any security for the due performance of the Decree of this Court. Further, that in the event the Bill of Costs is taxed and costs paid to the 1st Respondent, the Applicant shall be able to recover the costs given that the 1st Respondent is a public institution. In addition, the 1st Respondent avers that the costs were awarded as against all the Petitioners jointly and severally. Therefore, a stay of execution cannot issue as against a single Petitioner.



The 1st Respondent avers that the application is devoid of any merit and should be dismissed with costs.

4th Interested Party's Replying Affidavit

8. The 4th Interested Party opposed the application vide the Replying Affidavit of Joyce Wanjiru, its Operations Director dated 20/01/2025. The 4th Interested Party contends that it has never been served with a Memorandum of Appeal or a Record of Appeal since none has been filed in Court. The time for filing the Memorandum of Appeal lapsed on 11/12/2024.
9. That in any event, the Appellant has not demonstrated the substantial loss he is likely to suffer should execution issue against them. Further, should the appeal succeed, the 4th Interested Party has sufficient financial capacity to reimburse the Applicant the costs awarded. The deponent further avers that the Applicant has not demonstrated any willingness to provide security for the due performance of the taxation order.
10. The deponent further avers that taxation proceedings are independent of the impugned Appeal by the Applicant hence there is no prejudice that will be suffered by the Applicant should the taxation proceedings continue to its logical conclusion. That the application is a waste of precious judicial time and resources.

Court's direction

11. The court directed parties to canvass the application by way of written submissions. All the parties complied. The 3rd Petitioner's submissions are dated 12/02/2025 whereas the 1st Respondent and the 4th Interested Party's are both dated 25/02/2025.

3rd Petitioner's submission

12. The 3rd Petitioner submits that the only issue for determination is whether this Court should stay any further proceedings pending the hearing and determination of the appeal. The applicant submits that the intended taxation of the Party and Party Bill of Costs and all other proceedings should be stayed to allow the applicant to pursue his appeal. That this will ensure that the outcome of the appeal is secured and if successful, the 3rd Petitioner will not be engaged in another tedious exercise to recover costs. He submits that he stands to suffer prejudice if the proceedings herein are not stayed. He further argues that the 1st Respondent and 4th Interested Party will not suffer any prejudice if the orders sought are granted.

1st Respondent's submissions

13. The 1st Respondent submits that the only issue for determination is whether the Honourable Court should stay taxation proceedings pending hearing and determination of the Appeal. The 1st Respondent humbly submits that the Applicant is required to satisfy the conditions set out under Order 42 Rule 6(a) and (b) of the Civil Procedure Rules before he can be granted orders of stay of proceedings in taxation of Bill of Costs filed in this matter, which threshold the Applicant herein has failed to satisfy. The 1st Respondent's argues that the taxation of a Bill of Costs cannot occasion any loss to the person against whom it is taxed. Therefore, the issue of taxation causing substantial loss as alleged by the Applicant herein does not even arise.
14. The 1st Respondent asserts that the only effect of taxing a Bill of Costs is the ascertainment of the quantum of costs payable by one person to another. Thereafter, the party whose costs had been ascertained could take out execution proceedings as held in the case of *Deposit Protection Fund v*



Rosaline Njeri Macharia H. C. Civil Case 399 of 2005 (Nairobi). Further, that the taxation of the Bills of Costs herein cannot be stayed since the costs were awarded as against all the Petitioners. The taxation of the said Bills of costs cannot therefore be generally stayed when the 1st Respondent and 4th Interested Party have a chance to tax the Bills of costs and execute the Certificates of taxation as against the other Petitioners. In addition, that the 1st Respondent is a government institution with the capacity and means to refund the amount paid by the Applicant and/or any other Petitioner as a result of the taxation proceedings herein. The Applicant will therefore not suffer any irreparable prejudice if the orders sought are not granted.

15. The 1st Respondent cites the case of *NCBA Bank Kenya Limited –vs- Seaman Building & 3 Others* [2022] eKLR stated that;

“.... The application is premature, as the applicant does not stand to suffer any prejudice by the mere fact of the taxing of the costs. Those proceedings in my view will not in any way violate the applicant’s right of appeal neither will they in any way render the appeal nugatory. The outcome of taxation proceedings can be dealt with, but by themselves they are not prejudicial to the applicant and in any event no sufficient cause has been placed before me to show how the proceedings will render the appeal nugatory. It is in my view not in the interests of justice to allow the application for stay of proceedings.”

4th Interested Party’s submission

16. The 4th Interested Party also identifies the sole issue for determination as; whether the Applicant has met the conditions necessary for grant of stay of execution and/or taxation proceedings pending the hearing and determination of the Intended Appeal. The 4th Interested Party cites the provisions of Order 42 Rule 6 (2) on the conditions for the grant of a stay of execution. The 4th Interested Party argues that the 3rd Petitioner has not met the conditions thereon. On substantial loss, it avers that the Applicant has not demonstrated or pleaded the loss he is likely to suffer. Further, that the costs contemplated are monetary in nature which can always be refunded in the event that the Applicant’s appeal is successful.
17. In addition, the 4th Interested Party states that the Applicant has not provided any security for the due performance of the decree or order that may ultimately be binding upon them. That sufficient security can only be determined once the impugned Bills of Costs have been taxed.
18. The 4th Interested Party further submits that the orders sought will disproportionately increase the time and costs of litigation while producing unjust outcomes contrary to the requirements of the overriding objectives.

Analysis and Determination

19. Upon consideration of the application including the respective affidavits and submissions thereto, the only issue for determination is whether there should be a stay of taxation of the Bills of Costs dated 14/10/2024 and 11/11/2024 pending the outcome of the Appeal at the Court of Appeal.
20. The Applicants have sought for stay of the taxation of Bill of Costs proceedings pending the determination of the pending appeal. The legal provisions governing stay pending appeal is provided under Order 42 Rule 6(2) of the Civil Procedure Rules which states that:

’ No order for stay of execution shall be made under sub rule (1) unless—



- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.’
21. In the instant suit, the Applicant argues that the taxation of the Bills of Costs dated 14/10/2024 and 11/11/2024 by the 1st Respondent and the 4th Interested Party be stayed as it will prejudice them. Other than the Applicant arguing that he has preferred an appeal against the Ruling of the Court dated 7/10/2024 which includes costs granted to the 1st Respondent and 4th Interested Party, and that the appeal is likely to be rendered nugatory if the taxation proceedings proceed and are determined before the determination of the appeal, he has not indicated the prejudice that he stands to suffer if the taxation proceedings proceed.
22. As argued by the 1st Respondent and the 4th Interested Party, the Decree that shall be issued after taxation proceedings shall be a monetary decree. Therefore, in the event that the Applicant’s appeal succeeds and execution has been done, he can be reimbursed by the 1st Respondent and the 4th Interested Party. The Applicant has not challenged their inability to refund the funds in the event the appeal succeeds.
23. In the case of *Deposit Protection Fund V Rosaline Njeri Macharia* [2006] eKLR, the Court while dealing with an application of stay of taxation proceedings, observed as follows:

“Going back to the 2nd defendant’s arguments, I note them as saying that if the court did not grant an order for stay of the proceedings, the applicant would not suffer substantial loss, on account of the taxation of the defendants’ Bills of Costs. When faced with those submissions, the applicant did not tell the court how the taxation of the defendants’ Bill of Costs would cause them substantial loss. To my mind, the taxation of a Bill of Costs cannot occasion any loss to the person against whom it is taxed. Therefore, the issue of taxation causing substantial loss does not even arise. The only effect of taxing a Bill of Costs is the ascertainment of the quantum of costs payable by one person to another. Thereafter, the party whose costs had been ascertained could take out execution proceedings. The applicant did not, in my considered view, make out a case for stay of proceedings, and in particular a stay of the taxation of the defendants’ Bills of Costs. Furthermore, if the learned taxing officer were to proceed to tax the defendants’ Bills of Costs, the sums would be ascertained, and that would be the foundation upon which this court could base the size of the security which the applicant would need to raise, if the court did order that there be a stay of execution.”
24. From the facts as presented, it is my considered view that the taxation of the Bills of Costs is not prejudicial to the Applicant as it is thereafter, that they can proceed to apply for stay of execution if the 1st Respondent and the 4th Interested Party seeks to execute the Decree.
25. In addition, the Court of Appeal has not granted a stay of execution of the Judgement in which costs were awarded. It is trite that it is only through taxation that the costs can be ascertained. I am of the view that taxation proceedings are independent as this is the mandate of the Taxing Officer and in this instance, the impugned Bills of Costs are not subject of Appeal. See the case of *Pius Musimba Muasya & 15 Others –vs- Onesmus Ndolo Ngeta & 3 Others* [2022] eKLR



26. It is therefore my finding that the Applicant has not justified the grant of the orders for stay of taxation of the Bill of Costs pending the outcome of the appeal in the Court of Appeal. I decline to grant the said orders as sought.
27. In the circumstances, I find that the 3rd Petitioner's Notice of Motion dated 12/11/2024 is not merited. It is therefore dismissed with costs to the 1st Respondent and the 4th Interested Party.
28. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

NA for the 1st, 2nd, 4th and 5th Petitioners

Mr. Karwanda for the 3rd Petitioner.

Ms. Gathira for the 1st Respondent

NA for the 2nd, 3rd and 4th Respondents

NA for the 1st – 3rd Interested Parties

Mr. Warutumo for the 4th Interested party

CA – Ms. Yvette

