



**Shaw & 2 others v Director General, National Environment
Management Authority & 2 others (Environment & Land Case
29 of 2020) [2022] KEELC 12725 (KLR) (27 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12725 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 29 OF 2020
EK WABWOTO, J
SEPTEMBER 27, 2022**

BETWEEN

**ROBERT SHAW 1ST PLAINTIFF
DAVID MAMBO 2ND PLAINTIFF
SIMON HERD 3RD PLAINTIFF**

AND

**DIRECTOR GENERAL, NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY 1ST DEFENDANT
CHINA QINGJIAN INTERNATIONAL GROUP (KENYA) LIMITED 2ND
DEFENDANT
KENNEDY SIMIYU 3RD DEFENDANT**

RULING

1. The Notice of Motion application before this Court for determination was filed by the Plaintiffs and is dated May 5, 2022. The Plaintiff sought the following orders:
 - i. Spent...
 - ii. That this Honourable Court be pleased to stay taxation of the 3rd Defendants Bill of Costs dated February 24, 2022 pending the hearing and determination of this application.
 - iii. That this Honourable Court be pleased to stay taxation of the 3rd Defendants Bill of Costs dated February 24, 2022 pending the hearing and determination of the intended Appeal.
 - iv. The costs be provided for.



2. The Application is based on the following grounds:
 - i. That this Court delivered a Ruling on January 17, 2022 where it ordered that costs be paid to the 3rd Defendant by the Applicants.
 - ii. That the Applicants filed a Notice of Appeal dated January 20, 2022 and also requested for typed proceeding and certified copies of the ruling but yet to be provided with the said documents.
 - iii. That the taxation process has already started and the 3rd Defendant has already served us with a taxation Notice for his Bill of Costs dated February 24, 2022 where taxation is slated for June 13, 2022.
 - iv. That there being no stay of taxation, the Applicants are apprehensive that the 3rd Defendant's Advocate will proceed to execute upon the finalization of the taxation process thereby rendering the intended Appeal nugatory.
 - v. That the Applicants have a very high chance of success in its Appeal since it is a litigation on public interest.
 - vi. That the Applicant are concerned members of public who instituted the said suit as a public interest litigation suit touching a constitutional right to clean and healthy Environment.
 - vii. That the 3rd Defendant will not be prejudiced while awaiting the Appeal process.
3. On May 31, 2022, the Court ordered for the matter to be disposed of by way of written submissions. Save for the Plaintiffs and the 3rd Defendant, no submissions were filed on behalf of the 1st and 2nd Defendant.
4. In their Plaintiffs' submissions dated June 23, 2022, it was submitted that the only guiding principle for granting stay of proceedings is sufficient cause. For that reason, the court would not necessary be bound by the three conditions set out in Order 42 Rule 6 of the *Civil Procedure Rules 2010*. They further relied on cases including *Butt vs Rent Restriction Tribunal* [1982] KLR 417 and *Felix Mochiemo Oindi v Gutonya Newton Mbogo* [2018] eKLR.
5. It was further submitted that being a public interest litigation suit, the Appellants should not be condemned to pay costs. In relying on *Daniel Maore M'birithi v Miriti M'ikanatha* [2007] EKLK, the court was urged to consider that the prayer is rational and would ultimately save the Court's time and avoid parallel proceedings.
6. In the 3rd Defendant's submissions dated June 10, 2022, the 3rd Defendant submitted that the Appeal was contrary to Article 159 of the *Constitution* as it was merely a calculated delaying tactic by the Plaintiffs/Applicants which goes against the timely, cost-effective and proportionate dissolution of disputes.
7. Relying on *Re Global Tours & Travel Ltd HCWC No 43 of 2000*, and *Kenya Wildlife Service v James Mutembei* [2019] eKLR, it was submitted that not only did the Plaintiffs fail to show probability of success in their appeal but also that the taxation proceedings would not adversely affect the Plaintiffs who could apply later for a stay of execution when execution is imminent.
8. Having considered the Application and written submissions of the Plaintiffs and 3rd Defendant, it is clear that the main issue for determination is Whether the Plaintiffs/Applicants have met the threshold to be granted stay of taxation proceedings.



9. Order 42 Rule 6(1) of the [Civil Procedure Rules](#) where it is clearly stated that:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”

10. I am of the opinion that the Plaintiffs’ assertion that the suit is a matter of public interest is misleading. Although the Plaintiffs initiated the suit as residents of Windy Ridge and on behalf of Karen Langata District Association, no evidence was annexed that confirmed the Plaintiffs were truly officials or members of Windy Ridge and Karen Langata District Association. Any ground for sufficient cause hinged upon the essence of public interest would therefore fail.

11. It is a well laid out principle that costs follow the event. In this case, I believe that by restricting the 3rd defendants’ costs, the said costs would be relatively minimal as was stated in my ruling delivered on January 17, 2022.

“Accordingly, I direct that costs shall be paid by the Plaintiffs to the 3rd Defendant, however the same shall only be limited to the costs for defending the two applications that had been filed by the Plaintiffs.”

12. The Court of Appeal in [Deposit Protection Fund v Rosaline Njeri Macharia](#) [2006] eKLR, pronounced itself on the need of proving substantial loss as it stated:

“...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...”

13. I am also guided by the sentiments of Ochieng J in [Dickson Sinkeet Mapi v Naisenyu Pargarna Mutunkei](#) [2021] eKLR

“The taxation of the Respondent’s Party and Party Bill of Costs is not prejudicial to the Applicant, as he can seek for stay of execution after that, if the Respondent seeks to execute the Decree....I opine that it is only through taxation that the costs would be ascertained. Further, that taxation proceedings are independent as this is the mandate of the Taxing Officer and that the party and party Bill of Costs is not subject of Appeal.”

14. Based on the facts as presented, I find that the Plaintiffs/Applicants have not met the threshold set for granting stay of taxation of the 3rd Defendant’s Party and Party Bill of Costs pending the outcome of



the aforementioned application in the Court of Appeal and I will decline to grant the said orders as sought. PARAGRAPH 15.

15. In the foregoing, I find that Notice of Motion dated May 5, 2022 is unmerited and the same is dismissed with no orders as to costs.

16. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF SEPTEMBER 2022.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Muchui for the Plaintiffs/Applicants

Ms. Mwangi h/b for Ms. Lianza for the 1st Defendant.

N/A for the 2nd Defendant.

Mr. Musundi for the 3rd Defendant.

Court Assistant; Caroline Nafuna

E. K. WABWOTO

JUDGE

