



REPUBLIC OF KENYA



**Mbugua v Mathara Holdings Limited & another (Environment and Land
Case E072 of 2021) [2025] KEELC 4948 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4948 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E072 OF 2021**

JM ONYANGO, J

JULY 3, 2025

BETWEEN

SAMUEL MUGO MBUGUA PLAINTIFF

AND

MATHARA HOLDINGS LIMITED 1ST DEFENDANT

VICTORIA NYAMBURA KARUGU 2ND DEFENDANT

RULING

1. The Plaintiff/Applicant initiated this suit through a plaint dated 19th July 2021. The Plaintiff prayed for judgment against the Defendants/Respondents for declaratory orders that the suit properties were not private but that the same comprised a public road access; that the construction of a pit latrine and a guard house thereon was illegal and amounted to trespass. The Applicant further sought mandatory and permanent injunctions, directing and restraining the Respondents from erecting a barrier over the suit properties. He also sought general damages for trespass and violation of his rights of user and access to property.
2. Together with the plaint, the Applicant filed an application dated 19th July 2021 seeking temporary injunctive orders restraining the Respondents from denying him unlimited user and access through the "public roads" comprised in L. R. No. 14274/7/1, 14274/8/1 and 14274/9/1. The Applicant further sought interlocutory mandatory orders compelling the Respondents to remove barriers erected on L. R. No. 14274/7/1.
3. Subsequently, the 1st Respondent also filed a Notice of Motion application dated 9th November 2021, seeking to have the suit and the application dated 19th July 2021, struck out on the ground that the



Plaintiff lacked locus standi to institute the suit. The court (Eboso J) heard and determined the two applications simultaneously vide the ruling dated 9th May 2022, where it stated that:

“For the above reasons, the court finds merit in the 1st Defendant’s application dated 9th November 2021. Further, the court is satisfied that this is a proper case where the jurisdiction to strike out a suit can be properly exercised. The result is that the Plaintiff’s suit is fatally and irredeemably defective and is hereby struck out on the ground that the plaintiff did not have the requisite locus standi to initiate the suit. The suit having been struck out, the plaintiff’s application dated 19/7/2021 stands struck out alongside the suit. The Plaintiff will bear costs of the suit and the two applications.”

4. Being aggrieved by the said decision, the Applicant filed Nairobi Civil Appeal No. E605 of 2022; Samuel Mugo Mbugua vs Mathara Holdings Limited & Another. The 1st Respondent filed its Bill of Costs dated 14th June 2023 and submissions dated 15th January 2024. In response, the Applicant filed an application dated 29th January 2024, which is the subject of this ruling. However, it was brought to the attention of the court that the date was an error and that the correct date is 26th January 2024. Through the application, the Applicant seeks a stay of taxation proceedings pending the hearing and determination of the appeal. The application is brought under the provisions of Section 1A, 1B and 3A of the *Civil Procedure Act* and Article 50 (1) and Article 159 (2) (d) of the Civil Procedure Rules.
5. The application is premised on the grounds on the face of it and supported by the affidavit of the Applicant, sworn on 26th January 2024. He avers that he has filed Nairobi Civil Appeal No. E605 of 2022 against the ruling of the court dated 9th May 2022. He deposes that the appeal has been served upon the Respondents and is awaiting directions of the court. He further deposes that the appeal is arguable with high chances of success. He explains that the substratum of the taxation proceedings is the costs of the suit awarded to the Respondents vide the impugned ruling.
6. He states that the said proceedings are premature and subjudice and will result in wastage of time for both the court and the parties. He is apprehensive that he will be subjected to premature taxation proceedings and be compelled to bear costs whose basis shall be overturned in the appeal. He avers that no prejudice will be occasioned to the Respondents if the orders sought are granted. In conclusion, he contends that it is just and fair that this application be allowed as prayed.
7. The 1st Respondent opposes the application through a replying affidavit sworn by its director Victoria Nyambura Karugu (the 2nd Respondent) on 19th April 2024. It is the 1st Respondent’s position that the Applicant lacks the locus to bring this application pursuant to the ruling dated 9th May 2022. The 1st Respondent contends that the court became functus officio after rendering the ruling that found the Applicant lacked locus standi to institute the suit.
8. The 1st Respondent states that the Applicant filed Civil Application E169 of 2022 at the Court of Appeal seeking stay of proceedings in this suit pending determination of the appeal. He further states that the Court of Appeal dismissed the application through its ruling dated 4th August 2023. He adds that the Court of Appeal found that the ruling and orders sought to be stayed were negative orders incapable of being stayed. He faults the Applicant for attempting to have a second bite at the cherry given that the superior court had already pronounced itself on the issue of stay.
9. The 1st Respondent maintains that the taxation proceedings are pursuant to the orders of this court (Eboso J) given on 9th May 2022 which have not been set aside. The 1st Respondent adds that the Applicant has not met the threshold of stay of proceedings espoused under Order 42 Rule 6 of the Civil Procedure Rules. It further contends that it would reimburse the Applicant the costs of the suit in the event he is successful in the appeal. It is its position that the appeal does not have high chances of



success. The 1st Respondent deposes that the application is devoid of merit, vexatious, and an abuse of the court process, hence it ought to be dismissed.

10. The 2nd Respondent opposes the application through a replying affidavit sworn by herself on 30th April 2024. She states that she relies on the averments she made in the Replying Affidavit sworn on 19th April 2024. In conclusion, she states that the Applicant has brought this application in bad faith. She adds that it is fatally defective, vexatious and misleading to this honourable court.
11. None of the parties filed written submissions.

Analysis and Determination

12. Having considered the issues raised in the application and the responses to the applications the main issues for determination is: Whether this court should issue an order staying the taxation proceedings pending hearing and determination of the appeal.
13. The law on stay of proceedings is provided under Order 42 Rule 6(2) of the Civil Procedure Rules which provides 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.”

14. The principles that a court must consider in an application for stay of proceedings were set out in the case of *Global Tours and Travels Limited Nairobi Winding Up Cause No. 43 of 2000* cited in *Kenya Power & Lighting Company Ltd vs Esther Wanjiru Wokabi 2014 eKLR*, where the court stated as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice. The sole question is whether it is the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

15. The Applicant has claimed that the taxation proceedings are premature, given that he has filed an appeal challenging the ruling that led to the striking out of the suit and awarding of the costs that are subject to the taxation. The Applicant has further stated that continuing with the taxation proceedings will amount to unnecessary waste of time and resources for both the court and the parties. He has added that he will be compelled to bear costs whose basis will be overturned by the appellate court.



16. The court in the case of Deposit Protection Fund vs Rosaline Njeri Macharia [2006] eKLR observed as follows while dealing with an application for stay of taxation proceedings:

“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.”

17. Further, the court in the case of Pius Musimba Muasya & 15 Others v Onesmus Ndolo Ngeta & 3 Others [2022]eKLR stated thus:

“From the facts as presented, it is my considered view that the taxation of the Bill of Costs is not prejudicial to the Applicants as it is thereafter, that they can proceed to apply for stay of execution if the Respondents seek to execute the Decree. Further, the Court of Appeal has not granted a stay of execution of the Judgement in which the Respondents were awarded costs. It is trite that it is only through taxation that the costs can be ascertained. To my mind, I am of the view that taxation proceedings are independent, as this is the mandate of the Taxing Officer and in this instance, the Bill of Costs is not subject of Appeal.”

18. Guided by the above provisions of the law and the above-mentioned case law, this court is of the opinion that no sufficient reasons have been advanced by the Applicant to halt the taxation process. In any case, once the costs have been determined by the taxing officer and a judgment entered on the ruling of the taxing officer, the Applicant will be at liberty to apply for stay of execution of the decree of the court.

19. Accordingly, this court finds that the application dated 26th it November 2024 lacks merit and it is hereby dismissed with costs to the Respondents.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF JULY 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Miss Ndiho for the 1st Respondent

Mr. Mahinda for the 2nd Defendant

No appearance for the Plaintiff



Court Assistant: Hinga

