



REPUBLIC OF KENYA



**Chamunda Iron & Steel Hardware Limited v Pillar Africa International Limited & another  
(Commercial Appeal E004 of 2025) [2025] KEHC 6586 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6586 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
COMMERCIAL APPEAL E004 OF 2025  
FN MUCHEMI, J  
MAY 15, 2025**

**BETWEEN**

**CHAMUNDA IRON & STEEL HARDWARE LIMITED ..... APPELLANT**

**AND**

**PILLAR AFRICA INTERNATIONAL LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**GRACE MUMO MUTUNGI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 5<sup>th</sup> February 2025 seeks for orders of stay of execution against the ruling in Thika MCCC No. E120 of 2023 delivered on 3<sup>rd</sup> February 2025 in respect of the application dated 9<sup>th</sup> August 2024 pending the hearing and determination of the appeal.
2. The 1<sup>st</sup> respondent opposed the application and filed Grounds of Opposition dated 4<sup>th</sup> March 2025.

**Applicant's Case**

3. The applicant states that on 3<sup>rd</sup> February 2025, the Honourable Magistrate Joane Wambilyanga delivered a ruling re-taxing the 2<sup>nd</sup> respondent's party and party bill of costs dated 9<sup>th</sup> August 2024 at a sum of Kshs. 103,500- in Thika Civil Suit No. E120 of 2023. Being aggrieved with the said ruling, the applicant lodged an appeal which has high chances of success.
4. The applicant is apprehensive that the 2<sup>nd</sup> respondent will execute the impugned ruling as she had earlier done vide Braifus Auctioneers for the substantial amount of Kshs. 103,500-. The applicant is equally apprehensive that its appeal will be rendered nugatory unless the orders sought are granted.
5. The applicant avers that it has filed the instant application without undue delay. Further, the applicant states that it is willing to furnish security by depositing it into court.
6. The applicant states that the 2<sup>nd</sup> respondent shall suffer no prejudice if the orders sought are granted.



### **The 1<sup>st</sup> Respondent's Case**

7. The 1<sup>st</sup> respondent states the application is defective and unknown in law as the applicant ought to have filed a reference and not a memorandum of appeal. The 1<sup>st</sup> respondent argues that the said reference ought to be filed within 14 days from the date of ruling on taxation and assessment of costs.
8. The 1<sup>st</sup> respondent states that the applicant re-applied for re-assessment of costs which was done. The costs of the suit are determined by the value of the subject matter which in the instant case was a liquidated sum of Kshs. 1,336,565- and thus no legal magic can change the instruction fees as assessed by the trial court.
9. The 1<sup>st</sup> respondent states that the purported appeal and instant application are meant to invite the parties and the court into an academic exercise amounting to a waste of the court's time.
10. Parties put in written submissions.

### **The Applicant's Submissions.**

11. The applicant relies on Order 42 Rule 6(2) of the Civil Procedure Rules and submits that the instant application has been filed timeously as the ruling was delivered on 3<sup>rd</sup> February 2025 and the application filed two days later.
12. The applicant relies on the case of Antoine Ndiaye vs African Virtual University [2015] KEHC 6783 (KLR) and submits that in the event the stay orders are not granted and the 2<sup>nd</sup> respondent proceeds with the execution, the same will negate the very essence of the appeal.
13. The applicant submits that this being a money decree, substantial loss would essentially rely on the ability or inability of the 2<sup>nd</sup> respondent to refund the decretal sum should the appeal succeed. The applicant further submits that the 2<sup>nd</sup> respondent is not in a financial position to refund the decretal sum in the event the appeal succeeds. The applicant submits that in as much as the suit against the 2<sup>nd</sup> respondent was struck out for failing to disclose a cause of action against her, the suit against the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent is for payment of money which makes them apprehensive that the same way it is owed money by the 1<sup>st</sup> respondent and believed that the 2<sup>nd</sup> respondent played part in failing to pay its money, then the 2<sup>nd</sup> respondent is still likely to be in a position where she will not pay back or refund its money.
14. The applicant refers to the case of Focin Motorcycle Co. Limited vs Ann Wambui Wangui & Another [2018] eKLR and submits that it is willing to furnish security for the due performance of the decree. The applicant further submits that it has dispensed with the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules and the respondents shall not suffer any prejudice if the orders sought are granted. The applicant further submits that the appeal raises arguable issues that ought to be determined on merit.

### **The 1<sup>st</sup> Respondent's Submissions**

15. The 1<sup>st</sup> respondent relies on Rule II of the Advocates Rules and submits that the applicant ought to have filed a reference to a judge after 14 days after the decision of the taxing master. The 1<sup>st</sup> respondent argues that 14 days have lapsed and the applicant has not sought extension of time. The 1<sup>st</sup> respondent further submits that the costs of the suit are determined by the value of the subject matter. The subject matter is a liquidated sum of Kshs. 1,336,565 and according to paragraph 1(b) of Schedule 7 of the



Advocates Remuneration Order, the 2<sup>nd</sup> respondent is entitled to 75% of the fees chargeable and thus the taxing officer applied the schedule correctly.

### **The Law**

16. Rule 11 of the Advocates Remuneration Order provides:-
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.
17. The ruling of the bill of costs was delivered on 3<sup>rd</sup> February 2025. The applicant did not write to the taxing officer within 14 days notifying her of its objection as required under Rule 11 cited herein. Neither did the applicant file a reference as is required by the same rule. This principle was enunciated in *Ahmednasir Abdikadir & Company Advocates vs National Bank of Kenya Ltd (2) (2006) 1 EA 5* where the court held:
- Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of receipt of the reasons. Where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply because of the unfortunate wording of sub rule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not intended to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling.
18. Based on the applicable law, I reach a conclusion that this application and the appeal are fatally defective and unknown in law. As such, the application dated 5<sup>th</sup> February 2025 and this appeal are hereby struck out with costs to the respondent.
19. It is hereby so ordered

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**F. MUCHEMI**

**JUDGE**

