



REPUBLIC OF KENYA



KENYA LAW
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**Mugambi & 4 others v Nkoroi (Civil Appeal 49 of 2020)
[2025] KEHC 6909 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6909 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 49 OF 2020
HM NYAGA, J
MAY 20, 2025**

BETWEEN

STANLEY GITUMA MUGAMBI & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS APPLICANT

AND

CHARLES KIMATHI NKOROI RESPONDENT

RULING

1. The application before me is the Notice of Motion dated 17th May 2023, which seeks the following orders: -
 - a. Spent
 - b. The Honourable court be pleased to order for stay of execution herein pending the hearing and determination of Nyeri Appeal No. 72 of 2022.
 - c. The Honourable court be pleased to set aside, review and or vary the taxed costs herein and the bill of costs be heard on merit.
 - d. Costs be provided for
2. The applicant's case is that it is aggrieved by the Judgment of this court and has preferred an appeal in the Court of Appeal. That the court ordered the decretal sum awarded in the lower court to be deposited in joint names of the Advocate, which was done. That the taxation costs of the appeals were done in the absence of the applicant and the same are exaggerated.
3. The applicant explains that on the day the Bill of Costs was taxed, his advocate was unable to log into the court link virtually due to network issues. That no prejudice will be caused if the taxation is repeated or reviewed. That he will be prejudiced if he is not given a chance to be heard.



4. In response, the respondent depones that the applicant has not satisfied the requirements for grant of stay of execution pending appeal, in that he has not demonstrated any substantial loss to be suffered, nor offered security.
5. The respondent further avers that they have the ability to refund the decretal sum in the event the appeal is successful, as they had deposited the decretal sum in the lower court as ordered. That the same has since been released to them.
6. On the Bill of Costs, it is stated that the applicant's advocates were duly served with the taxation notice but failed to file any objection or attend the taxation. That having failed to comply with the procedure under Rule 11 of the Advocates Remuneration Order the application is incompetent.
7. The parties filed their respective submissions.
8. For the respondent /applicant it was submitted that the court has power under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules to grant the orders sought. That sufficient grounds have been advanced for the court to review the orders in question. Cited to buttress this suit were the following cases:
 - a. Republic -vs- Public Procurement Administrative Review Board & 2 Others (2018).
 - b. Pancras T. Swai -vs- Kenya Breweries Limited (2014)eKLR
9. Citing Article 50(2) of the Constitution, the applicant submits that his right to a fair trial was violated. That this right is non-derogable as set out in the Constitution and restated in the Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa.
10. Still on the question of fair trial the applicant cited the following authorities from the Supreme Court India :-
 - a. Natasha Singh vs CBI {201} 5 SCC 741
 - b. Rattiram – vs- State of M. P {2012} 4 SCC 516
11. For the appellant/respondent, it is submitted that the applicant did not file any objection to the bill of costs as provided under Rule 11 of the advocates (Remuneration) Order, which required him to state in writing the items that he was objecting to. It is further submitted that the motion is defective as there is a clear procedure provided for redress. Cited to buttress this point was the case of Speaker of National Assembly – vs- Njenga Karume [1992]eKLR.
12. It is also submitted that there was inordinate delay in presenting the application which works against the applicant. Cited was Republic – vs Kenyatta University & Another ex-parte Wellingtone Kihato Wambua (2018)eKLR.
13. Citing Twiga Motor Limited- vs – Hon. Dalmas Otieno Onyango (2015)eKLR, it is submitted that no enlargement of time is envisaged by the said paragraph 11(4) of the Advocates (Renumeration) Order.
14. The appeal herein was determined in favor of the Respondents who were awarded costs on the said appeal and in the lower court. The applicant states that he had filed an appeal against the said decision. A notice of appeal dated 20/6/22 was duly filed.
15. The parties appeared before me almost one and half years after the appeal in the Court of Appeal was filed. There was no clarity on the status of the Appeal, itself, which forms part of the reason that the applicant seeks stay of execution.



16. To succeed, the applicant has to bring himself within the parameters of order 42 Rule 6(2) of the Civil Procedure Rules which provides as follows:-

Order 42

Rule 6. Stay in case of appeal [Order 42, rule 6]

2. No order for stay of execution shall be made under subrule (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.

17. The first limb of the application is pegged on the appeal filed in the Court of Appeal. It is to be noted that the intended execution was for the costs as awarded by this court.
18. Has the applicant shown that the will suffer substantial loss?
19. The applicant avers that if execution proceeds, he will suffer substantial loss. The respondents have indicated that they had already deposited the decretal sum ordered in the lower court, pending the appeal herein. Therefore they, argue, they are capable of refunding the costs paid to them should the appeal in the Court of Appeal succeed.
20. It is a fact that the respondents herein had been ordered to deposit the decretal sum in court which order they duly complied with. In view of their averments which I agree with, I find that the applicant has not established that the will suffer substantial loss of that his appeal, whose status is unknown, will be rendered nugatory. The respondents are capable of refunding the same once paid.
21. The application was filed just over a month after the costs in this court were taxed. Therefore, there has been no unreasonable delay.
22. On security, it is noted that the applicant has not offered any.
23. The settled law is that an applicant such as the one in this application ought to offer security. Having not offered any such security, the court finds that the applicant has failed to comply with the 3rd limb of the requirements under Order 42 Rule 6(2) of the Civil Procedure Rules.
19. Thus the applicant has only succeeded in one limb, that of filing the application within time. It is settled law that to succeed, an applicant has to meet all three requirements. This was reiterated in *Trust Bank Limited vs Ajay Shah & 3 Others*, [2012] eKLR at page 23 where the court stated that;
- “The conditions set out in Order 42 Rule 6(2) (a) and (b) are cumulative. All the three must be satisfied before a stay can be granted. The Applicant only satisfied one condition and failed to satisfy the others. For the foregoing reasons, I find that the Plaintiff’s Notice of Motion dated 24th April, 2012 it without merit.”
24. Having failed to meet all the requirements under the said rule, I find that the first limb of the application cannot succeed.
25. I will now deal with the 2nd limb of the application, which seeks review/variation of the orders taxing the bill of costs herein.



26. An application for review is hinged on the provisions of Section 80 of the *Civil Procedure Act* which provides as follows: -

“ 80. Review

Any person who considers himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

27. Further Order 45 Rule 1 of the Civil Procedure rules lays out the grounds for review. It states as follows:-

Order 45 - Review

1. Application for review of decree or order [Order 45, rule 1]

(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

28. Looking at the application there is really no error apparent at the face of the record. Nor is there any new matter that has arisen. The taxation proceeded when the Tax Master was satisfied that service of the Bill had been duly effected. Thus there is no ground to warrant a review.

29. After taxation, the applicant was required to file an objection to the decision, citing the items he objected to. It is evident that this did not happen. Instead the applicant filed this application.

30. As submitted by the respondent, there is a provision for a party wishing to object a decision of a Tax Master. Rule 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”.

31. Assuming that the application seeks to set aside the taxation, is the same merited?
32. The applicant filed the application on 13/6/2023 over 1 ½ months after the decision of the Tax Master. He has not sought an enlargement of time to file his objection as envisaged by the Rule11(4). It provides that;
 - (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.
33. In such circumstances, I find that the 2nd prayer is time barred and cannot issue.
34. In conclusion, I find this application to be lacking in merits and it is dismissed with costs.

DATED, SIGNED & DELIVERED AT MERU THIS 20TH DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

