



**Melly v Chesiyna & 2 others (Environment & Land Case
E041 of 2023) [2025] KEELC 3870 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3870 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E041 OF 2023**

CG MBOGO, J

MAY 19, 2025

BETWEEN

STEPHEN KIPCHIRCHIR MELLY PLAINTIFF

AND

GRACE CHEPKOECH CHESIYNA 1ST DEFENDANT

APVALE COMPANY LIMITED 2ND DEFENDANT

I & M BANK LIMITED 3RD DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 24th January, 2025, filed by the plaintiff/ applicant, and it is expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 51 (1) of the Civil Procedure Rules and Article 159 of *the Constitution* of Kenya seeking the following orders: -
 - a. That this honourable court be pleased to stay proceedings in the instant suit pending the hearing and determination of Milimani HCCOMM/E381/2024 which has been filed in the proper court by the plaintiff and another after the instant suit was withdrawn.
 - b. That this honourable court be pleased to stay the taxation/assessment of costs in the instant matter scheduled for 28th January, 2025 before Honourable Tessy Marienga pending the hearing and determination Milimani HCCOMM/ E381/ 2024.
 - c. That costs abide the outcome of Milimani HCCOMM/ E381/ 2024.
2. The application is premised on the grounds on the face of the application and in the affidavit of the plaintiff applicant sworn on even date. The plaintiff/applicant deposed that the matter came up for mention on 11th December, 2023 when the court observed the commercial nature of the dispute and opined that the same be withdrawn and filed in the proper forum.



3. The plaintiff/applicant deposed that he followed the court's advice and withdrew the suit, and filed the same in the proper forum. However, the 1st, 2nd and 3rd defendants/respondents filed their bill of costs dated 24th October, 2024, and 29th February, 2024 respectively, and it is in the interest of justice that the instant proceedings be stayed pending the outcome of HCCOMM/E381/2024. In conclusion, the plaintiff/applicant deposed that the outcome of Milimani HCCOMM/E381/2024 would be rendered nugatory should he be condemned to bear the costs in the instant suit.
4. The application was opposed by the replying affidavit of the 3rd defendant/respondent sworn on 6th March, 2025 by Doreen Otieno. The 3rd defendant/ respondent deposed that the order for costs made in this suit properly applies to these proceedings and they are wholly separate and distinct from HCCOMM/ E381/2024. Further, that when this matter came up for mention before the Honourable Justice Oguttu Mboya, the plaintiff/applicant conceded to the issue of jurisdiction, and the court marked the matter as withdrawn with a specific order for costs against him.
5. The 3rd defendant/respondent deposed that they began taxation proceedings before this court pursuant to the court's orders, and the instant matter has no legal nexus to the proceedings before the High Court. Further, that if the plaintiff/applicant wanted to stay the taxation proceedings, he would have intimated that to this court which he did not do.
6. The application was further opposed by the replying affidavit of Michael Owano Otieno, the learned counsel for the 1st and 2nd defendants'/respondents' sworn on 7th March, 2025. The learned counsel raised similar depositions to those made by the 3rd defendant/respondent, and further deposed that the plaintiff/applicant was aware of the impending taxation proceedings resulting from the withdrawal of the suit, and had ample time to file this application as the orders had been issued more than a year earlier. The learned counsel deposed that the grounds raised in the application do not explain any nexus between the two suits.
7. The application was canvassed by way of written submissions. The plaintiff/ applicant filed his written submissions dated 18th March, 2025 where he raised one issue for determination which is whether the 2nd defendant/respondent is entitled to costs following the withdrawal of the suit in the Environment and Land Court. On this issue, the plaintiff/applicant submitted that awarding costs for proceedings before this court at this stage would be premature and prejudicial to him as the substantive determination on costs should abide the outcome and the final determination of Milimani HCCOMM/E381/2024. To buttress on this submission, the plaintiff/applicant relied on the case of St Elizabeth Academy Karen v Kenya Commercial Bank & Another [2025] KEHC 2688 (KLR).
8. Further, he submitted that whereas Section 27 of the *Civil Procedure Act* is clear that costs follow event, the court has discretion to order that costs should abide the outcome of related proceedings especially where the interests of justice so require. He relied on the cases on Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others [2014] eKLR, and Kenya Willdife Service v James Mutembei [2019] KEHC 10478 (KLR).
9. The plaintiff/applicant further submitted that allowing the taxation proceeding to continue may result in a scenario where costs are determined independently of the final judgment before the High Court, thereby leading to possible inconsistencies.
10. By the time of writing this ruling, the defendants/respondents had not filed their written submissions. Be that as it may, I have considered the application, the replies thereof and the written submissions filed by the plaintiff/applicant. I am of the view that the issue for determination is whether this court ought to stay the taxation proceedings in this matter pending the hearing and determination of HCCOMM/ E381/2024.



11. I have perused the record in this file and I note that on 11th December, 2023, this suit was marked as withdrawn at the instance, and request of the plaintiff/applicant, and the costs of the withdrawn suit were awarded to the defendants/ respondents. I do also note that the parties were directed on costs and in default the same was to be taxed by the taxing officer. The defendants/respondents proceeded to file their respective Bill of Costs before the taxing officer.
12. The plaintiff/applicant now seeks stay of the taxation proceedings, an issue which is currently before the taxing officer. He argued that the taxation ought to be stayed for the reason that he has filed the suit in the proper forum and in any event upon final determination, there may be double taxation. Also, that it is necessary to save on precious judicial time so that taxation if any, may be done once and for all after determination of the matter that is before the high court. In opposition thereto, the defendants/ respondents argued that there is no nexus between the matter before this court and the high court, and also, that if there was intention to seek stay, the same would have arisen much earlier.
13. Having analysed the above issues, it is my view that the plaintiff/applicant has failed to satisfy this court why taxation proceedings should be stayed pending the outcome of a suit that is before a different court. A stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera J. (as he then he was) in *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)*.

“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 in 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” (emphasis added).

14. Halsbury’s Law of England, 4th Edition. Vol. 37 page 330 and 332, states that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases. It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

15. As stated earlier, the plaintiff/applicant has failed to show the nexus between the two matters which are distinct and separate. The time of filing the instant application is suspect and is a delay tactic to stall the taxation proceedings before the taxing officer. The case of *St Elizabeth Academy Karen v Kenya Commercial Bank & Another [2025] KEHC 2688 (KLR)*, cited by the plaintiff/applicant is irrelevant, and does not favour him at all.



16. From the above, the notice of motion dated 24th January, 2025 lacks merit, and it is hereby dismissed.
Each party to bear its own costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 19TH DAY OF MAY, 2025.

HON. MBOGO C.G.

JUDGE

19/05/2025.

In the presence of:

Ms. Betty Cherono - Court assistant

Ms. Matingi holding brief for Mr. Otieno for the 1st and 2nd Defendants/Respondents – present

Mr. Kipsekiei holding brief for Mr. Koech for the plaintiff/Applicant – present

No appearance for the 3rd Defendant/Applicant

