



**Ibrahim, Isaack & Co Advocates v Farah Awad & Sons Limited (Miscellaneous Civil Application E978 of 2023) [2025] KEHC 11947 (KLR) (Civ) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11947 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**MISCELLANEOUS CIVIL APPLICATION E978 OF 2023**  
**SN MUTUKU, J**  
**JUNE 17, 2025**  
**IN THE MATTER OF THE ADVOCATES ACT, CAP. 16 LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF THE ADVOCATES (REMUNERATION) ORDER, 2006/2009**  
**AND**  
**IN THE MATTER OF TAXATION OF AN ADVOCATE-CLIENT BILL OF COSTS**  
**BETWEEN**  
**IBRAHIM, ISAACK & CO ADVOCATES ..... ADVOCATE**  
**AND**  
**FARAH AWAD & SONS LIMITED ..... CLIENT**  
**RULING**

**The Notice of Motion**

1. Farah Awad & Sons Limited (the Applicant) filed the Notice of Motion dated 7<sup>th</sup> May 2025 (the Motion) seeking the following orders:
  1. Spent.
  2. This Honourable Court be pleased to review and set aside paragraphs 2 and 3 of the order dated 8<sup>th</sup> April 2025, requiring the Respondent (the Applicant herein) to deposit Kshs. 800,000 in court within 21 days as a condition for the stay of execution and providing for the automatic lapse of the stay order upon failure to comply.



3. This Honourable Court be pleased to reinstate the stay of execution granted under prayer 2 of the Chamber Summons dated 26<sup>th</sup> March 2025, on the varied condition that the Respondent (the Applicant herein) deposits Kshs. 500,000 in court within three (3) days of this court's ruling, pending the hearing and determination of the Reference.
  4. In the alternative, this Honourable Court be pleased to reinstate the stay of execution without any deposit condition, pending the hearing and determination of the Reference, considering the Respondent's (the Applicant herein) financial constraints.
  5. The costs of this application be provided for.
2. The Motion is brought under Sections 1A, 1B, 3A and 80 of the Civil Procedure Act (CPA); Order 45, and Order 51, Rule 1 of the Civil Procedure Rules (CPR); and Articles 48, 50 and 159(2)(d) of the Constitution of Kenya. It is supported by the grounds found on the face of the application and in the Supporting Affidavit sworn by the Applicant's Director, Muhamud Farah Awad on the 7<sup>th</sup> May 2025.
  3. It is the case for the Applicant that on 8<sup>th</sup> April 2025, this court granted an order for stay of execution of the ruling on taxation delivered on 4<sup>th</sup> March 2025 on the condition that the Applicant deposits a sum of Kshs. 800,000/- in court within 21 days thereof, failing which the order for stay would automatically lapse. That the Applicant was not able to deposit that amount leading to the lapse of the order or stay 29<sup>th</sup> April 2025 and that the Applicant managed to raise Kshs 500,000 towards satisfying the court order.
  4. It was deposed that failure by the Applicant in depositing the said sum within the stipulated timelines was unintentional and was occasioned by factors beyond its control, namely the erroneous issuance of Invoice No. 9320196 by the Civil Registry at Milimani Law Courts, in the name of Ibrahim, Isaack & Co. Advocates (the Respondent) rather than in the name of the Applicant or its advocates, coupled with the unsuccessful attempts on the part of the Applicant's advocates in remitting the abovementioned sum of Kshs. 500,000/- to the Judiciary Payment System, since the System does not accept partial payments.
  5. The deponent has proceeded to aver that the Applicant is currently facing grave financial challenges arising from operational difficulties which would explain its inability in raising the full amount ordered by this court.
  6. The Applicant seeks to have the originally ordered sum of Kshs. 800,000/- revised downwards to the sum of Kshs. 500,000/-, to enable the order of stay to subsist in order to maintain the status quo pending the hearing and determination of the Reference previously filed by the Applicant.
  7. The Applicant has urged that unless the orders sought herein are granted, it stands to suffer irreparable loss and that no prejudice will be occasioned to the Respondent if the order for stay is reinstated on the terms sought in this application.

### **The Grounds of Opposition**

8. The Application is opposed by the Respondent through the Grounds of Opposition dated 12<sup>th</sup> May 2025. The Respondents stated that:
  1. That the Applicant's failure to deposit the required Kshs. 800,000 within the stipulated 21 days, as per the Court's directions of 8<sup>th</sup> April 2025, vacates the stay of execution orders. The Applicant's inability to comply with this condition is not due to any fault of Advocate/ Respondent.



2. That the instant application is an abuse of the court process, a waste of the Court's time, fatally defective and hence ought to be struck off and/or dismissed.
3. That the Applicant's application appears to be an abuse of the court process, as it seeks to circumvent the clear and unequivocal terms of the Court's directions of 8<sup>th</sup> April 2025. The Applicant has had ample time to comply with the directions but has failed to do so.
4. That the Applicant has failed to satisfy the conditions for grant of orders for review and setting aside the Court Directions.
5. That the Application offends the provisions of Order 45 Rule 1(1) of the Civil Procedure Rules as the Application does not state any mistake or error apparent on the face of the record or discovery of any new evidence prior to the Directions and/or Orders of 8<sup>th</sup> April 2025.
6. That the Applicant has not demonstrated any new and important matter or evidence that was not within their knowledge or could not be produced by them at the time when the order was made. The grounds cited by the Applicant, including administrative errors and financial constraints, do not constitute sufficient reasons for the review of the court's order.
7. That the Applicant's Application is premised to deny the Advocate/Respondent enjoyment of the fruits of the Ruling on the Advocate/Client Bill of Costs dated 4<sup>th</sup> March 2025.
8. That there is no prejudice that will be occasioned upon the Applicant if the Application is dismissed.
9. That litigation must come to an end and the file be closed.
10. That allowing the Applicant to reinstate the stay of execution without complying with the Court's directions would prejudice the Respondent's right to enjoy the fruits of the ruling.
11. That the Application ought to be struck out or dismissed with costs to the Claimant." (Sic)

### **Oral Submissions**

9. The Application was canvassed by way of oral submissions. Mr. Omondi learned counsel for the Applicant reiterated the averments earlier made in the Supporting Affidavit and added that the Applicant still holds the sum of Kshs. 500,000/- and is ready to deposit the same as a condition for reinstating the stay order. He submitted that the Applicant has already paid the court collection fees of Kshs. 1,500/- as a show of good faith in complying with the condition for a stay earlier set by this court.
10. Mr. Omondi argued that contrary to the Grounds of Opposition, the review order sought in the instant Application rides primarily on the element of new and important evidence, being the issuance of an erroneous invoice and the payment restrictions emanating from the Judiciary Payment System. He further argued that the condition requiring the Applicant to deposit the sum of Kshs. 800,000/- is disproportionate to its operations, adding that the Respondent does not stand to be prejudiced if the Applicant is permitted to deposit the proposed sum of Kshs. 500,000/
11. Mr. Namude, learned counsel for the Respondent relied on the Grounds of Opposition in arguing that orders deriving from the courts ought to be complied with, and that in the present instance, the Applicant's failure to comply with the orders previously issued by this court would disentitle it from a grant of the orders sought. Mr. Namude contended that no sufficient reasons have been given to warrant the orders sought and that the Application is purely intended to deprive the Respondent of



the fruits of his ruling on taxation. He urged that the Application be either struck out or dismissed, with costs.

12. In his brief rejoinder arguments, Mr. Omondi reiterated that the non-compliance on the part of the Applicant was largely occasioned by the fact that the Judiciary Payment System does not accept partial payment of ordered fees/costs.

### **Analysis and Determination**

13. I have the Application and the grounds in support of it. I have considered arguments by the parties. The record of the Court shows that the Respondent filed an Advocate-Client Bill of Costs dated 5<sup>th</sup> July 2023 arising from Milimani Civil Case No. 661 of 2012, and sought costs to the tune of Kshs. 18,620,521.96 against the Applicant. The Bill of Costs was opposed by the Applicant. Upon consideration thereof, the learned taxing officer (Deputy Registrar) taxed the Bill of Costs in the sum of Kshs. 1,308,633.12 through a ruling delivered on 4<sup>th</sup> March 2025.
14. The Applicant was aggrieved by that ruling. He moved this court through a Chamber Summons Reference dated 26<sup>th</sup> March 2025 seeking to have the aforesaid ruling set aside and taxed afresh. When the parties attended this court on 8<sup>th</sup> April 2025 an order for a stay of execution of the ruling was granted pending hearing and determination of the Reference, on the condition that the Applicant deposits a sum of Kshs. 800,000/- in court within 21 days of the above date, failing which the stay order would automatically lapse. The aforesaid order and terms thereof prompted the filing of the current application.
15. That the Applicant did not comply with the court orders within the 21 days granted is not in dispute. The reasons given are that the Applicant was not able to raise Kshs 800,000 ordered by the court as condition for the order of stay. It is also not in dispute that the order for stay automatically lapsed on or about 29<sup>th</sup> April 2025 for want of compliance with the orders of this court by the Applicant.
16. The Applicant seeks review and setting aside of orders 2 and 3 granted on 8<sup>th</sup> April 2025. The said orders do not exist. They automatically lapsed for failure of the Applicant to comply with the same. Consequently, the Applicant cannot seek to review and set aside the order for stay granted on 8<sup>th</sup> April 2025, for that order is now spent. Order 2. of the instant Application is declined.
17. This leaves the second substantive order seeking reinstatement of the stay of execution, and a variance of the amount required to be deposited, to enable the Applicant to deposit a reduced sum of Kshs. 500,000/- within a period of three (3) days, with an alternative prayer that the order for stay be reinstated unconditionally.
18. I have considered the explanation offered by the Applicant for its non-compliance with the conditions set out in the orders issued on 8<sup>th</sup> April 2025 that it experienced challenges in raising the sum of Kshs. 800,000/- and that it encountered challenges in subsequently depositing the collected sum of Kshs. 500,000/- through the Judiciary Payment System. I have equally considered the opposing arguments by the Respondent, that the Applicant had every opportunity to comply with the conditions for stay but did not and that the reinstatement of the order for stay in the absence of compliance, will prejudice the Respondent.
19. I have noted that the Applicant has availed an order summary issued by the Judiciary dated 29<sup>th</sup> April 2025, annexed as “MFA 2” to the Supporting Affidavit. It shows that it was issued to the Respondent, which would support the explanation offered by the Applicant as to why it was unable to make any deposits into the Judiciary account. The Applicant has also annexed an order summary dated 30<sup>th</sup> April 2025 and marked “MFA 1” indicating that the error in names was subsequently rectified. Moreover,



the Applicant has availed transaction records information marked as “MFA 3” to further support its averment of the challenges experienced in depositing the sum of Kshs. 500,000/-.

20. In the circumstances, I find the explanation given by the Applicant for the delay in compliance, to be reasonable in the circumstances. I am persuaded that there was an attempt at complying with the orders of the court. In view of the circumstances pertaining, I am persuaded that the Respondent is not likely to suffer prejudice which cannot be compensated by an award of costs, should the order for stay be reinstated. I am therefore satisfied that it would serve the substantive interest of justice to reinstate the stay order.
21. Concerning the subject of review/variance of the condition given on the stay order upon reinstatement, the guiding principles in deciding whether to grant review are found under section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules, 2010 and can be summarized as follows:
  - a. 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
  - b. some mistake or error apparent on the face of the record, or
  - c. any other sufficient reason.
22. The Applicant has argued that the primary reason for seeking a downward review of the condition for stay is its inability to raise the entire sum of Kshs. 800,000/- due to alleged financial and operational challenges on its part. In contrast, the Respondent has argued that no proper grounds for review have been established by the Applicant and hence it is not entitled to a review or variance of the sum to be deposited.
23. While the Applicant has expressed its inability to raise the entire amount ordered due to financial constraints, no credible material has been tendered to support the assertions that the Applicant is undergoing financial difficulties and is therefore unable to raise the entire sum of Kshs. 800,000/-.
24. In view of the foregoing circumstances, I am not persuaded that the Applicant is incapable of raising the entire amount, being Kshs 800,000, as ordered by this court. consequently, I decline to review or otherwise vary the conditions for stay, or to issue an order for stay on unconditional terms. However, in the interest of substantive justice, I will extend the time required for compliance with the conditions earlier set for granting the order of stay of execution.
25. Consequently, the Notice of Motion dated 7<sup>th</sup> May 2025 partially succeeds in that I hereby reinstate the order for the stay of execution made on 8<sup>th</sup> April 2024 on the condition that the Client/Applicant shall deposit the entire sum of Kshs. 800,000/- in court within 21 days from the date of this ruling, in default of which the order for stay shall automatically lapse. The costs of this application shall be paid to the Advocate/Respondent.
26. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 17<sup>TH</sup> JUNE 2025.**

**S. N. MUTUKU**

**JUDGE**

In the presence of:

Mr. Athuok and Mr. Namude for the Advocate/Respondent



Mr. Omondi fro the Client/Applicant

