Muri Mwaniki Thige & Kageni LLP Advocates v Muvokanza Limited (Commercial Miscellaneous Application E090 of 2023) [2025] KEHC 8630 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8630 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL MISCELLANEOUS APPLICATION E090 OF 2023

JWW MONG'ARE, J

JUNE 13, 2025

BETWEEN

MURI MWANIKI THIGE & KAGENI LLP ADVOCATES ..... APPLICANT

AND

MUVOKANZA LIMITED ..... CLIENT

RULING

1. On 14th November 2024 this Honourable Court delivered a Ruling dismissing the Client/Applicants application of 8th May 2023 that sought to block the Advocate-Client Bill of Costs from proceeding to taxation by the Deputy Registrar. Subsequently and upon delivery of the said Ruling the Client/ Applicant filed a Notice of Appeal in the Court of Appeal signalling its intention to challenge the said ruling. At the same time the Client has by a Notice of Motion filed under a certificate of urgency and brought under Order 51 Rules 1 & 3 of the Civil Procedure Rules and Sections 1A (1), 1B 1(a&b) and 3A of the *Civil procedure Act* on 11th December 2024 and it seeks the following reliefs:-
    1. Spent
    2. Spent
    3. That this Honourable Court do issue a Stay of the Taxation of the Advocate/Respondent Bill of Costs dated 8th February 2023 pending the Hearing and Determination of the Applicant's Appeal to the Court of Appeal.
    4. That costs of this application be provided for.
2. The application is supported by the grounds set out on its face and the supporting affidavit sworn by Mumo Mwendwa on 11th December 2024. The Application is opposed and the Advocate/Respondent

has filed a replying Affidavit sworn by Njunguna Muri Advocate on 17th January 2025. While the Court directed both parties to file written submissions in this matter, upon perusal of the court record only the Advocate/Respondent has complied with said directions and filed their written submission dated 11th January 2025, which I have carefully considered.

3. The present application has been filed under the underpinning general principles in the Civil Procedure Acct that allows the Court to objectively consider motions before it in execution of its mandate and in the interest off advancing litigant's rights to access to justice. The Applicant having filed a Notice of Appeal has approached this court seeking to stay the execution of its orders issued in the Ruling of 14th November 2024. In the said ruling, this court allowed the reinstatement of the Applicant's application of 8th May 2023 that had sought to stop the court from proceeding to tax the Advocate Client Bill of Costs that is still pending before the Deputy Registrar for determination. Upon reinstatement of the said application, the Court proceeded to consider the said application and found the same to be without merit and proceeded to dismiss the same paving the way for the taxation of the said Bill.

4. With the present application seeking to stay the said process what the applicant is asking the court is to stop the process until such a time the intended appeal is heard and determined. I have perused the court record. I note that the only document evidencing the intention to appeal is the Notice of Appeal that was filed immediately the ruling was delivered by this court. The Applicant has not attached to these proceedings the memorandum of appeal that has subsequently been filed nor explained at what stage the appeal process is at.

5. Order 42 Rule 6 of the Civil Procedure Rules sets out the principles upon a court may allow a prayer for stay of proceedings pending the hearing and determination of an appeal. The said provision of the law provides as follows;

> " Stay in case of appeal [Order 42, rule 6]
>
> (1) 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.
>
> (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.

(3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.

(4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.

(5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.

(6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with."

6. Arising from the above provisions the court is called to consider before granting the prayers sought three parameters; firstly, the Application has been filed without inordinate delay; secondly, the applicant has demonstrated that they stand to suffer substantial loss if the prayers sought are not granted; and thirdly, they are willing to offer security for costs. At this juncture, it is important to point out that what this court allowed by its ruling of 14th November 2024, was the taxation of the Advocate-Client Bill of costs. This process is yet to commence which will then determine, how much is owed as legal fees to the Advocates. It is impossible at this juncture to determine how much loss would be occasioned to the applicant by an untaxed bill.

7. In addition, and as correctly argued by the Respondent, what the court is being asked to do is to stay the implementation of a negative order. The orders of the court dismissed an application. It did not command anything to be done. Consequently, and as held by court in the case of Catherine Njenga Maranga v Serah Chege & another (2017)eKLR ... "The Applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the Applicant has lost. The refusal simply means that the Applicant stays in the situation he was before coming to court and therefore the issues of substantial loss that he is likely to suffer and the appeal being rendered nugatory does not arise."

8. The above position was reiterated in the case of Chege v Gachora (Civil Appeal No. 265 of 2023) (2024) KEHC 1994 (KLR) where the court stated once again as follows ... "The order dismissing the application is in the nature of a negative order and is incapable of a stay of execution, save perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour off the respondent which is capable of execution, there can be no stay of execution of such order.... the applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise...". This court held similar views in a decision before it in the case of Dripcap Irrigation Lt*d v Commissioner of Customs & Border Control (CTA No. E029 of 2023*) [2024] KEHC 7799 (KLR).

9. In sum, and arising from the above findings, this court finds and holds that the application filed on 11th December 2024 is found to be without merit and the same is dismissed with costs to the Advocate. Parties are directed to proceed and conclude the taxation of the Advocate- Client Bill of Costs forthwith. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF JUNE 2025

J.W.W. MONGARE

JUDGE

In the presence of:-

Mr. Waweru holding brief for Mr. Thige for the Advocate/Respondent.

Dr. Khaminwa for the Client/Applicant.

Amos- Court Assistant