



**Sagalla Ranchers Limited v Mwadilo & another (Civil Suit
1 of 2018) [2024] KEHC 2697 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL SUIT 1 OF 2018
GMA DULU, J
MARCH 12, 2024**

BETWEEN

SAGALLA RANCHERS LIMITED PLAINTIFF

AND

WILMOT MWADILO 1ST DEFENDANT

PATRICK MBINGA 2ND DEFENDANT

RULING

1. Before me is an application by way of Notice of Motion dated 22nd May 2023, filed under Section 1A, 1B, and 3A of the Civil Procedure Act (Cap.21), and Order 51 and Article 159 of the Constitution and seeks the following orders:-
 1. (Spent).
 2. There be a stay of taxation of the defendants Party and Party Bill of Costs dated 11th April 2023 pending the hearing and determination of the plaintiff's appeal duly filed before the Court of Appeal.
 3. Costs of the application be provided for.
2. The application has grounds on the face of the Notice of Motion that the plaintiff has instituted an appeal to a ruling of 11th October 2022; that the issue of costs has a direct bearing on the appeal which is an arguable appeal; that the plaintiff/applicant is yet to be heard; and that the applicant will suffer irreparable loss if the costs are taxed as the appeal will become an academic exercise.
3. The application was filed with a supporting affidavit sworn on 22nd May 2023 by Raphael Lewela Mbinga a director of the applicant which amplifies the grounds of the application.



4. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by KKOAdvocates for the plaintiff/applicant as well as the submissions filed by Gikandi & Company Advocates for the respondent.
5. Having considered the application and arguments of all the parties, in my view, it is not in dispute that a ruling of this court has been issued already against the applicant. It is also not in dispute that the respondents were awarded costs. It is further not in dispute that the plaintiff/applicant has already lodged an appeal to the Court of Appeal against the High Court ruling, which appeal is pending.
6. The issue herein is thus whether it is the most efficacious position for taxation of costs in the matter to be done at this time, while an active appeal is pending.
7. In my view, conducting taxation at this stage is not the most efficacious and cost and thing to do. Firstly, such taxation will overstretch the parties in engaging in side dispute instead of dealing with the pending appeal, and secondly, to do taxation now just for the sake of it, and then wait for the decision on appeal, which might overturn the orders of the court of first instance and even issue fresh orders, is an unnecessary cost and engagement.
8. I also note that the taxation application having been already filed and on record, will stand pending and alive until the determination of the appeal in the Court of Appeal, and as such no party stands to lose anything by the taxation remaining pending for determination once the appeal is finalized.
9. I thus allow the application and order as follows:-
 - a. I hereby issue a stay of taxation of the defendants party and party Bill of Costs dated 11th April 2023 pending the hearing and determination of the plaintiff's appeal duly filed before the Court of Appeal.
 - b. Costs of this application will abide the decision in the appeal.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF MARCH 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Moses Kurgat for plaintiff/applicant

Mr. Randa holding brief for respondent

