



**Nyachoti & Co Advocates v Amiran Communications Limited (Miscellaneous Application E117 of 2021) [2023] KEHC 2320 (KLR) (Commercial and Tax) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2320 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E117 OF 2021**

**A MABEYA, J  
MARCH 22, 2023**

**BETWEEN**

**NYACHOTI & CO ADVOCATES ..... ADVOCATE**

**AND**

**AMIRAN COMMUNICATIONS LIMITED ..... CLIENT**

**RULING**

1. This ruling determines the application dated January 23, 2023 brought under section 3A of the [Civil Procedure Act](#) 2010, order 42 rule 6 and order 51 of the [Civil Procedure Rules 2010](#). The motion sought to stay the taxation of the bill of costs dated January 18, 2021 pending the hearing and determination of the intended appeal in the Court of Appeal of an earlier ruling of this court.
2. The application was supported by the affidavit sworn by Andrew Baker. The grounds were that; the deputy registrar had allowed the client's application for stay of the bill of costs pending the hearing and determination of Nairobi Employment and Labour relations court cause No 1130 of 2018 Gar Arbel & 2 others v Balton CP. Aggrieved by the said ruling, the advocate filed a reference before this court which set aside that ruling and directed that the matter proceed before another taxing officer.
3. That the client was dissatisfied with the said decision and intends to appeal to the Court of Appeal and has since filed a notice of appeal. The client contended that the appeal is arguable and would be rendered nugatory if the taxation proceedings are not stayed. That the application was brought without undue delay and the respondent would suffer no prejudice if the orders sought are not granted.
4. In opposition to the application, the advocate filed grounds of opposition dated February 1, 2023. He contended that the client had not met the threshold required for the court to grant the orders of stay. That the client had not offered security as per the requirements of order 42 rule 6 of the [Civil Procedure Rules](#). That the client had failed to demonstrate substantial loss. It was further averred that that the



grounds of appeal as set out in the draft memorandum of appeal were misplaced and irrelevant. That the court lacked jurisdiction to stay taxation of the bill of costs.

5. The application was canvassed by written submissions. The client submitted that the court was clothed with the requisite jurisdiction to stay the taxation proceedings pending the determination of the appeal. That order 42 rule 6(1) empowered the court to issue a stay of execution pending appeal. Further, that the court was clothed with inherent jurisdiction by virtue of section 3A of the *Civil Procedure Act* to make the orders sought.
6. Counsel submitted that the applicant had met the threshold for stay of proceedings and that the condition for furnishing security was not a prerequisite for stay of proceedings. On whether the appeal was arguable, counsel submitted that the grounds of appeal annexed to the draft memorandum of appeal were worthy of consideration by the Court of Appeal as they had raised valid questions of law and fact. That the appeal would be rendered nugatory if the taxation of bill of costs was not stayed.
7. The advocate submitted that, while the application was filed without unreasonable delay, the client had failed to meet the conditions set out in order 42 rule 6(2) of the *Civil Procedure Rules 2010*. That the client had not demonstrated sufficient cause or shown the substantial loss it would suffer if the taxation is allowed. Counsel submitted that the burden was on the client to furnish security and the same was not met.
8. I have considered the pleadings, the submissions and the relevant case law. The main issue for determination is whether a case has been made for stay of proceedings.
9. The jurisdiction of the court in an application for stay of proceedings is derived from order 42 rule 6 of the *Civil Procedure Rules* and the inherent jurisdiction under section 3A of the *Civil Procedure Act*.
10. Order 42 rule 6(1) of the *Civil Procedure Rules* provides that: -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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.”
11. The *Re Global Tours & Travel Ltd* HCWC No 43 of 2000 Ringera, J observed as follows: -

“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 matter, it should bear in mind such factors as the need for expeditious disposal of case, 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.”



12. For an order of stay of proceedings to be made, an applicant must demonstrate that there is sufficient cause and that it is in the interests of justice that there should be a stay of proceedings, that there would be substantial loss if the stay is not granted, that the benefit of stay outweighs the prejudice of having the proceedings being packed in the court as a backlog. The application must also be made expeditiously.
13. In the present case, the client was aggrieved by the ruling delivered December 16, 2022 in which the court held that there was an advocate-client relationship between the advocate and the client and remitted the matter back for taxation. The client has appealed against that decision. The client wants that taxation be stayed.
14. The client's contention is that the appeal is arguable since it challenges the existence of advocate-client relationship between the respondent and the applicant. It was the applicant's assertion that the appeal would determine whether the court usurped the taxing master's jurisdiction.
15. An order of stay of proceedings ought to be made sparingly so as not to interfere with the right of a litigant to prosecute its case. In this case, the bill of costs arose out of the instructions purportedly given to the advocate. The advocate client relationship which is the basis of the bill of costs has been challenged.
16. The purpose of taxation of the bill is to ascertain the quantum of costs payable from one party to another. It is not a process of execution. Once the bill is taxed. There is the process of certifying the amount taxed before any process of execution can be gone to.
17. In my view, the client has not demonstrated how proceedings before the deputy registrar would render the appeal nugatory. Probably, the issue of nugatory of the appeal can only arise if the costs were ascertained and then execution therefor threatened and/or effected. That is a stage which is yet to come. There is no sufficient cause to warrant the grant of the orders sought. My take is that the taxation is a preliminary stage of ascertaining costs and such ascertainment cannot be said to be pre-judicial. It is the execution therefor that can be complained of. An order for costs can atone the client if the appeal succeeds.
18. Accordingly, I find the application to be without merit and I dismiss the same with costs.  
It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF MARCH, 2023.**

**A. MABEYA, FCI Arb**

**JUDGE**

