



**Owiti, Otieno & Ragot Advocates v Nyambati (Environment and Land Miscellaneous Application 45 of 2019) [2025] KEELC 6880 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6880 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 45 OF 2019**  
**SO OKONG'O, J**  
**OCTOBER 9, 2025**

**BETWEEN**

**OWITI, OTIENO & RAGOT ADVOCATES ..... APPLICANT**

**AND**

**JASON M NYAMBATI ..... RESPONDENT**

**RULING**

1. The Applicant filed an advocate and client bill of costs dated 14<sup>th</sup> November 2019 for taxation against the Respondent in respect of the services that the Applicant was said to have rendered to the Respondent in Kisumu ELC No. 498 of 2015 (formerly Kisumu HCCC No. 171 of 2011) (hereinafter referred to as “the primary suit”). The Applicant’s bill of costs was taxed on 28<sup>th</sup> October 2021 at Kshs. 263,500.32, and a certificate of taxation was issued for the said amount by the taxing officer on 11<sup>th</sup> November 2021. The Respondent did not object to the taxation under Paragraphs 11(1) and (2) of the Advocates Remuneration Order.
2. The Respondent did not pay the taxed and certified costs to the Applicant. The Applicant brought an application by way of a Notice of Motion dated 6<sup>th</sup> September 2023 under Section 51(2) of the *Advocates Act*, Chapter 16 of the Laws of Kenya, seeking an order that the certificate of taxation issued in favour of the Applicant on 11<sup>th</sup> November 2021 in the sum of Kshs. 263,500.32 be adopted as judgment of the court and the Applicant be awarded interest on the judgment sum at the rate of 14 percent per annum from 13<sup>th</sup> February 2020 until payment in full. In a ruling delivered on 3<sup>rd</sup> April 2025, the court allowed the Applicant’s application and entered judgment for the Applicant against the Respondent in the sum of Kshs. 263,500.32 together with interest at the rate of 14 percent per annum with effect from the date of judgment until payment in full.
3. What is now before the court is the Respondent’s application brought by way of a Notice of Motion dated 7<sup>th</sup> April 2025, in which the Respondent has sought a stay of execution of the judgment delivered herein on 3<sup>rd</sup> April 2025 pending the hearing and determination of the intended appeal against the



same to the Court of Appeal. The application, which is supported by the affidavit of the Respondent, sworn on 7<sup>th</sup> April 2025, was brought on the grounds that the Respondent was dissatisfied with the said judgment and had lodged a notice of appeal against the same. The Respondent averred that the Applicant would proceed with the execution of the judgment unless the stay sought was granted. The Respondent averred that he was a retiree, a widower, and sick.

4. The Applicant opposed the application through a replying affidavit sworn by Jude Ragot on 11<sup>th</sup> April 2025. The Applicant averred that the Respondent did not appeal against the ruling of the taxing officer delivered on 28<sup>th</sup> October 2021. The Applicant averred that the present application was brought in bad faith to delay the payment of the judgment amount. The Applicant averred that the decretal sum of Kshs. 263,500.32 was not substantial and could be refunded to the Respondent by the Applicant should the Respondent succeed on his intended appeal. The Applicant averred that should the court be inclined to grant the stay sought, it should be conditional upon the Respondent depositing the entire decretal amount in an interest-earning bank account in the names of the advocates on record for the parties.

### **Analysis and Determination**

5. The Respondent's application was heard on 2<sup>nd</sup> July 2025 when Mr. Nyamweya appeared for the Respondent, while Mr. Ragot appeared for the Applicant. I have considered the application together with the affidavit filed in support thereof. I have also considered the replying affidavit filed by the Applicant in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The Respondent's application seeks a stay of execution pending appeal. The application was brought under Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules, which provides that:

“(1) 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.

(2) No order for stay of execution shall be made under sub-rule (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 ultimately be binding on him has been given by the applicant.”

6. In *Halai & another v Thornton & Turpin (1963) Ltd [1990] KECA 65 (KLR)*, the court stated as follows on this court's power to grant an order of stay of execution pending appeal:

“Thus, the Superior Court's discretion is fettered by three conditions. Firstly the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss



would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable delay.”

7. In *Kenya Shell Limited v Karuga* (1982 – 1988) I KAR 1018 the court stated that:

“It is usually a good rule to see if order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”

8. I am not persuaded that the Respondent would suffer substantial loss if the stay sought is not granted. The decree, the execution of which is sought to be stayed, is a monetary decree. The Respondent has not demonstrated that the Applicant, which is a law firm, would not be in a position to refund to the Respondent the decretal sum of Kshs. 263,500.32 if paid, should the Respondent succeed in his appeal. I am of the view that the fact that the Respondent is a retiree and that the decretal sum is beyond his current income is not a valid ground for granting a stay of execution. In the absence of evidence that the Respondent would suffer substantial loss if the stay is not granted, the application for stay has no basis.

### **Conclusion**

9. In conclusion, I find no merit in the Respondent’s application dated 7<sup>th</sup> April 2025. The application is dismissed with costs to the Applicant.

**DELIVERED AND SIGNED AT KISUMU ON THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

**S. OKONG’O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of;

Mr. Kapinde for the Applicant/Respondent

N/A for the Respondent/Applicant

The Respondent/Applicant in person

Ms. J. Omondi-Court Assistant

