

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**

**ELRC CAUSE NO. E559 OF 2017**

***(Before Hon. Lady Justice Hellen Wasilwa, J)***

**SHUAIB**  
.....**CLAIMANT**

**ADAM**.....

**VS**

**JAPAN INTERNATIONAL COOPERATION**  
**AGENCY**  
**(JICA)**.....**RESPONDENT/APPLICANT**

**RULING**

- 1 The Respondent/Applicant filed a Notice of Motion dated 14<sup>th</sup> December 2024 seeking orders that: -
- 1) *Spent*
  - 2) *Pending the hearing and determination of this application inter partes, there be a stay of execution of the certificate of taxation dated 5<sup>th</sup> June 2025 issued by the Deputy Registrar in respect of the Ruling on the Respondent's Party and Party Bill of Costs.*
  - 3) *Pending the hearing and determination of the Appeal in the Court of Appeal under Appeal No. E011 of 2024, there be a stay of execution of the certificate of taxation dated 5<sup>th</sup> June 2025 issued by the Deputy Registrar in respect of the Ruling on the Respondent's Party and Party Bill of Costs.*

- 4) *Pending the hearing and determination of the intended appeal against the ruling of the Deputy Registrar delivered on 5<sup>th</sup> June 2025, there be a stay of execution of the certificate of taxation.*
- 5) *The costs of this application be provided for.*
- 6) *The Honourable Court be pleased to issue such orders as the justice of the case demands in favour of the Applicant.*

### **Respondent/Applicant's Case**

- 2 The Applicant avers that the Deputy Registrar delivered a ruling on taxation of the Claimant's Bill of Costs on 5<sup>th</sup> June 2025 and a certificate of taxation has been issued.
- 3 It avers that unless the stay of execution is granted, the Claimant may move to execute the certificate of taxation and recover sums that are the subject of the intended appeal thereby rendering the appeal nugatory.
- 4 The Applicant avers that it is willing to abide by the orders of the court relating to deposit of security pending appeal but the same has been frustrated by the Claimant who has refused to cooperate in opening a joint account.
- 5 The Applicant avers that on 13<sup>th</sup> June 2025, the Claimant/Respondent's counsel served the Appellant with a letter threatening to proceed with execution within three days if taxed amount is not paid forthwith.

- 6 It is the Applicant's case that it has filed the application without delay and it is in the interest of justice that orders sought be granted to preserve the subject matter of the appeal.
- 7 The Applicant avers that the Claimant has commenced execution proceedings including the attachment of its property contrary to Article 2(5) and (6) of the Constitution read together with the Privileges and Immunities Act. The Claimant is well aware that its property is immuned from attachment under Article 3 of the Host Country Agreement between the Kenyan government and itself and Legal Notice No. 131.
- 8 The Applicant avers that no actual inventory of goods was ever conducted at its premises as required under the Auctioneers Act and the Auctioneers Rules. The items in the purported proclamation notice is false, speculative and fraudulent as it does not arise from any verified assessment of its premises.
- 9 It is the Applicant's case that the Claimant defied a court order to participate in opening a joint account thus frustrating the stay of execution in the matter, with the singular purpose of obtaining execution orders.
- 10 The Applicant avers that unless this court intervenes to stay the execution proceedings, there is imminent danger that its immunities and privileges will be violated causing grave prejudice and diplomatic embarrassment.

- 11 The Applicant avers that in its judgment on 26<sup>th</sup> June 2023, the court did not award any costs of the suit to the Decree Holder. Despite the absence of this order, the Decree Holder has proceeded to file a Bill of Costs which was taxed and has now commenced execution proceedings to recover the said amount.
- 12 It is the Applicant's case that the taxation and any attempt to execute the same is irregular, unlawful and an abuse of the court process as there exists no lawful basis for the award of costs where the court expressly declined to make such an award and ordered the parties to bear their own costs.

### **Claimant/Respondent's Case**

- 13 In opposition to the Application, the Claimant/Respondent filed a replying affidavit dated 30<sup>th</sup> June 2025 sworn by his advocate on record.
- 14 The Claimant/Respondent avers that the application is merely targeting the execution for the taxed costs and is not opposed against the Claimant's Judgment/decretal sum.
- 15 It is the Claimant's case that whereas a party to a taxation process reserves the right to challenge the outcome of any taxation costs in dispute, the timelines for doing so

are spelt out at Rule 11 of the Advocates' Remuneration Order which has not been complied with.

- 16 The Claimant/Respondent avers that the existence of an appeal between the parties is not stay per se as the Court granted the Applicant a conditional stay order on the 18<sup>th</sup> October 2024 which it refused, failed and/or declined to comply and/or abide with leading to the lapse of the stay and as such there is no stay in place against the valid judgment on record.
- 17 The Claimant/Respondent avers that the merits and/or demerits of the appeal as filed in the Court of Appeal will be determined at the opportune time and there being no stay in place leave the Claimant/Decree Holder with the option of moving on to recover what is lawfully due to him.
- 18 The Claimant/Respondent avers that he has no control over a party who has been directed to deposit funds in a fixed deposit account within set timelines and they fail to do so.
- 19 The Claimant/Respondent avers that the Applicant has not filed any reference against the taxation in the right forum within the required time.
- 20 It is the Claimant/Respondent's case that the Applicant is aware that the judgment sum of USD 60,923 as entered in his favour on 26<sup>th</sup> June 2023 together with accrued interest remains unpaid yet the Applicant does not speak to it. He contends that the application for stay is frivolous,

vexatious and misconceived and should be dismissed with costs.

- 21 The Claimant/Respondent avers that the court order to open a joint bank account was not done within the timelines set thereby allowing the conditional stay orders issued on 22<sup>nd</sup> October 2024 to lapse with no attempt to seek enlargement of the time from the court.
- 22 The Claimant/Respondent avers that the reference to diplomatic immunity is an afterthought as the Applicant never raised the issue during the subsistence of this suit up to the time of judgment. In any event, there cannot be immunity against a valid legal judgment unless the same is satisfied within the parameters of the law.

### **Applicant's Submissions**

- 23 The Applicant submitted that it is trite law that once Kenya ratifies an instrument conferring immunity, its courts must give it effect under Article 2 of the Constitution. It cited the Supreme Court in ***Karen Njeri Kandie v Alassane Ba & African Development Bank [2015] eKLR*** wherein the Court upheld the immunity of the African Development Bank, applying Article 2(6) together with Kenya's obligations under the Agreement Establishing the AfDB and the Privileges and Immunities Act.
- 24 The Applicant submitted that it is not disputed that its premises, furnishings and its other property are immune

from attachment or execution under Article 3 of The Host Country Agreement between the Government of Kenya and the Japan International Co-operation Agency (JICA), Article 22 of The Privileges and Immunities Act (Japan International Co-operation Agency), 2014. It is a settled principle of law that immunity against execution affects the jurisdiction of the court to sanction attachment or enforcement proceedings against property or assets of an immune party. Even where a court assumes jurisdiction to hear a matter, execution against an immune entity is prohibited unless immunity is waived. No such waiver has been demonstrated.

25 It is the Applicant's submission that a jurisdictional issue can be raised at any stage of a suit by a party to the suit or by the court *suo motu* including during execution. In ***Kenya Ports Authority v Modern Holdings [E.A] Limited [2017] eKLR***, the Supreme Court reiterated that jurisdictional objections may be raised at any stage of the proceedings and are never time-barred. The application herein is in relation to execution and reference to diplomatic immunity by the applicant is in relation to the applicant's immunity against the execution. Therefore, the issue of immunity against execution has been raised at the right time.

26 The Applicant submitted that Section 27(1) of the Civil Procedure Act (Cap 21) clarifies that costs only become payable when the court pronounces them in a judgment. It

follows, therefore, that unless the judgment expressly awards costs to a party, no party can file a bill of costs or seek recovery through taxation. It cited ***Party of Independent Candidates of Kenya v Mutula Kilonzo & 2 others [2013] eKLR***, in which the Court of Appeal emphasized that costs must be expressly provided for in the final orders of the court before they are capable of being recovered.

- 27 The Applicant further submitted that the decree issued by this Honourable Court did not award costs of the suit to the Decree-Holder. Consequently, the taxation and certificate of taxation issued therefrom are irregular and unenforceable in law.
- 28 The Applicant submitted that the application was filed on 18<sup>th</sup> June 2025, whereas, the ruling on taxation was delivered on 5<sup>th</sup> June 2025. It has therefore been filed expeditiously without unreasonable delay.
- 29 The Applicant submitted that it stands exposed to execution for KES 1,886,920 pursuant to the irregular certificate of taxation dated 5th June 2025. If the irregular execution is levied, the sums will be irrecoverable should the Court of Appeal allow the appeal, thereby rendering the appeal nugatory.
- 30 The Applicant submitted that it is a cardinal principle in law that no party should be allowed to benefit from deliberate disobedience of court orders. The Claimant's

counsel's conduct in refusing to cooperate in the opening of a joint account, and simultaneously pushing for execution, amounts to abuse of process.

- 31 It is the Applicant's submission that an advocate on record should not depose to contentious or substantive matters of fact in a suit where he/she appears as counsel, save for purely formal, procedural, or uncontested matters. The Claimant's supplementary affidavit sworn by Judith A. Guserwa offends established legal principles and authorities since she is the counsel on record for the claimant. The supplementary affidavit is therefore incurably defective, incompetent, and amounts to an abuse of the court process, and ought to be struck out from the record.

### **Claimant/Respondent's Submissions**

- 32 The Claimant/Respondent submitted that the Applicant should not direct him and/or his counsel on who should prepare and swear a replying affidavit in relation to matters within their knowledge.
- 33 The Claimant/Respondent submitted that the decision by Judith Guserwa to swear a Replying Affidavit for and on behalf of the Claimant with his full authority and there is no bar in law to stop such an action as the Applicant is purporting to hide behind legal technicalities that have been raised to run away from liability. In that regard, this Court should strike out and/or dismiss the Replying

Affidavit by Hellen Kimaru for being misleading, malicious and of no legal value to the proceedings before this Court.

34 The Claimant/Respondent submitted that timelines given to parties to file pleadings in any matter do not defeat justice and fairness as is being alleged by the Applicant.

35 The Claimant/Respondent attempts by the Applicant to raise issues of immunity after Judgement has been entered against it is an afterthought intended to defeat the ends of justice. The issue of immunity is being raised after Judgement has been issued in favour of the Claimant and costs have been taxed and certified for recovery after the Applicant was unable to meet the conditions of stay issued in their favour. In any event a party who is not satisfied with a ruling on taxation reserves the right to file a reference against the said ruling which was never done.

36 I have examined all the averments and submissions of the parties herein. The applicant seeks stay of the ruling on taxation on the claimant's bill of costs of 5/6/25. The application avers that they are willing to abide the condition for stay relating to security ordered by court.

37 I note that a stay had already been granted by court vide its ruling dated 22/10/24 where the court directed the respondent applicant to deposit the decretal sum in an interest earning account in the joint name of counsels on record. The same was to be done within 30 days. It appears the the order was not complied with hence the

warrants of execution after the respondents threatened to execute the judgment of the court.

38 The issue of stay has already been determined. The respondent having already appealed before the Court of Appeal it would be a miscarriage of justice to lift the stay whether for execution of the decretal sum or for costs.

39 The responders have averred the the claimant herein caused the delay in implementing the courts order for by refusing to participate in opening a joint account thus frustrating the stay of execution in the matter. The respondents did not demonstrate how this was done through evidence though in the circumstances of the case and in order not to render the appeal nugatory, I will allow the stay sought and the condition for stay already in place will stand. In addition to depositing the decretal sum the applicant will also deposit the taxed costs. This should be completed within 30 days in a joint interest earning account held in the joint names of counsels in record in default execution to proceed.

**Dated, Signed and Delivered Virtually at Nairobi this 31<sup>st</sup> Day of October 2025.**

**HELLEN WASILWA  
JUDGE**