



**BOS Shipping (East Africa) Limited v Rehmen & another (Environment and Land Case 121 of 2019) [2025] KEELC 7336 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7336 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 121 OF 2019  
SM KIBUNJA, J  
OCTOBER 29, 2025**

**BETWEEN**

**BOS SHIPPING (EAST AFRICA) LIMITED ..... PLAINTIFF**

**AND**

**ABDALLA ABDUL REHMEN ..... 1<sup>ST</sup> DEFENDANT**

**TEXAS ALARMS (K) LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Notice Of Motion Dated 24th July 2025**

1. The 2nd defendant filed a notice of motion dated 24th July 2025 seeking for the following orders:
  1. “Spent.
  2. Spent.
  3. That this Honourable Court be pleased to make an order for stay of execution of the certificate of costs /taxation of the orders of taxing officer issued on 21st June 2024 pending hearing and determination of the appeal to the Court of Appeal.
  4. That costs of this application be provided for.”

The application is premised on the thirteen (13) grounds on its face marked (a) to (m) respectively, and supported by the affidavit of Bernard Odhiambo Aduda, Group Human Resource Manager, sworn on 25th July 2025, deposing inter alia that the 2nd Defendant had challenged taxation of the plaintiff’s party and party bill of costs dated 18th April 2024, through a reference in chamber summons dated 25th June 2024, that was dismissed by this court in the ruling delivered on 2nd July 2025; that the 2nd defendant filed a notice appeal to the Court of Appeal dated 4th July 2021 to challenge the said ruling, and served it upon



the plaintiffs; that having filed the notice of appeal, it is deemed under Order 42 (6) that an appeal has been lodged; that in a letter dated 7th July 2025 they requested the Deputy Registrar to supply them with typed proceedings, aforementioned ruling and orders ensuing; that their advocates have informed them that they are awaiting the finalization of the typing and certification of proceedings; that upon delivery of the taxation/certificate of costs, their advocates requested for stay which was granted for 30 days, pending the filing of a formal application which period was to lapse on 2nd August 2025; that in the afore mentioned reference, they had sought for stay which was granted on 26th June 2024 on condition that they deposits the whole taxed costs in an interest earning joint account within three days, from the date of that order; that on 28th June 2025 they deposited Kshs. 4,108,666.67 at Bank of Baroda Nyalı Branch in the joint names of the Advocates herein; that their advocates realized through the e-filing system that the plaintiff's advocates through a letter dated 23rd July 2025 had requested the Deputy Registrar to issue them with further certificate of costs/taxation factoring in interest despite the fact the taxed costs were deposited; that the action is a clear demonstration of the plaintiff's intention to execute the said certificate of costs; that if this application is not allowed, they will suffer substantial loss and render the appeal nugatory; that they had filed this application without delay, and that they have complied with the orders of this court.

2. The plaintiff opposed the application through the three grounds of opposition dated 5th September 2025, that states as follows:
  - i. "That this court has no jurisdiction to hear and determine this application.
  - ii. The application is barred by res judicata.
  - iii. The 1st defendant/Applicant has not met the threshold for granting of the orders sought."
3. The court on 17th September 2025, gave directions on filing and exchanging submissions. The learned counsel for the 2<sup>nd</sup> defendant and plaintiff filed their submissions dated the 16<sup>th</sup> September 2025 and 17<sup>th</sup> September 2025 respectively, which the court has considered.
4. The issues for the determinations by the court are as follows:
  - a. Whether this court has jurisdiction to hear and determine the application.
  - b. Whether the 2<sup>nd</sup> defendant has met the threshold for stay order pending appeal to issue.
  - c. Who bears the costs?
5. The court has carefully considered the grounds on the application, affidavit evidence, submissions by the learned counsel and come to the following findings:
  - a. In the plaintiff's submissions, counsel submitted inter alia that on 2<sup>nd</sup> July 2025 this court dismissed the 2nd defendant's reference and allowed their application dated 17th July 2024 for vacation of the stay of execution order made on 26th June 2024; that since the said ruling is the subject of the ongoing appeal, before the Court of Appeal, it is only that court that can issue stay orders, and that counsel for the 2nd defendant had admitted that fact in their submissions. Simply put this court cannot stay an order, which it did not give as per Order 42 Rule 6(1) of the Civil Procedure Rules. On his part, the 2<sup>nd</sup> defendant's counsel inter alia submitted that the orders they seek are of stay of execution of above-mentioned ruling.
  - b. The 2<sup>nd</sup> defendant's application is clear and unambiguous, and the prayers sought are for stay of execution of the certificate of costs, pending the hearing and determination of the appeal



against the ruling dated 2nd July 2025, and this is what the court will focus on. Without losing the above focus, I wish to point out that the court has been left in the dark on the progress made after the filing of the Notice of Appeal against the said ruling, that is the anchor on which this application must be considered. If there is no existing appeal, then determination of this application becomes moot. This is definitely the last bullet by which the 2nd defendant has as the notice of appeal against the judgment delivered on 22nd November 2023 was reportedly struck out.

- c. The stay of execution order dated 26th June 2024 as stated by the 2nd defendant was issued by this court in the interim after filing of the amended chamber summons dated 25th June 2024, which is the said reference. In that reference, the 2nd defendant had sought for inter alia the setting aside of the certificate of costs herein, but no stay of execution of the certificate of costs was prayed for.
- d. Furthermore, counsel for the plaintiff argues that stay of execution of certificate of costs was addressed in the said ruling being appealed from, and hence this application is res judicata. Nothing could be further from the truth as the said ruling is clear in paragraph 6 (a) that the stay for execution orders it was discussing are those under Order 22 Rule (22) of the Civil Procedure Rules which provides for stay of execution of a decree. The stay orders that were vacated by the ruling of 2nd July 2024 were in relation to the decree issued on 24th June 2024. The current application dated 24<sup>th</sup> July 2025 has inter alia invoked order 42 Rule 6 of Civil Procedure Rules and this court has jurisdiction in the first instance in applications for stay of execution pending appeal to the Court of Appeal. An applicant may also move the appellate court for stay of execution pending determination of the appeal.
- e. On the second issue about merit, the court refers to the case of *Muyuma versus Kaveva & Another* [2025] KEELC 680 (KLR) where the court cited with approval the case of *Rubo Kimngetich Arap Cheruiyot versus Peter Kiprop Rotich* [2006] eKLR where it was held that:

“It is my view that a Decree duly approved and signed had to be on record for any execution to take place, whether for the eviction, costs or otherwise. As far as the parties in a suit are concerned, a certificate of costs is not an executable legal instrument. A certificate of costs is not capable of being “executed”. Warrants of attachment and sale cannot in law be issued on the basis of a certificate of costs. There must be a decree first. It is true that the Decree may not be necessarily or always contain the ascertained costs. Costs can be determined before a decree is issued or subsequently, after the Decree has been drawn. However, for one to recover costs, there must be a decree. Any money awarded by court including costs is only payable under a decree particularly, if it is through enforcement (see Order XXI, Rule 1).”

The position expounded in the above decision remains true today, as the amendments to the Civil Procedure Rules have not provided otherwise.

- f. However, the court has noted that indeed the 2nd defendant did deposit the taxed amount in an interest earning joint account as directed during the hearing of the reference. However, the rules of procedure, specifically under Order 45 (1) (2) of the Civil Procedure Rules, the court cannot review a matter, which is pending before the Court of Appeal, but parties may seek for relief before that court. The upshot of the foregoing is that the application is without merit and is for dismissal.



- g. That as the 2<sup>nd</sup> defendant has failed in their application then they will thus bear the plaintiff's costs in terms of section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya, that provides that the costs follow the events unless where for good cause ordered otherwise.

6 From the foregoing conclusions, the court finds and orders as follows:

- a. The 2<sup>nd</sup> defendant's application dated 24th July 2025 is without merit and is hereby dismissed.  
b. The 2<sup>nd</sup> defendant to bear the plaintiff's costs.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 29TH DAY OF OCTOBER 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Plaintiff : Mr. Oluga

Defendants : Mr. Tindika For 2<sup>Nd</sup> Defendant

Kalekye-court Assistant.

