



**Kimemiah v Wambugu (Sued as the Legal Administrator of Jacob Juma -Deceased) & 6 others
(Environment and Land Case 351 of 2008) [2025] KEELC 7521 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 351 OF 2008
AA OMOLLO, J
OCTOBER 30, 2025**

BETWEEN

AURIEL JOY KIMEMIAH PLAINTIFF

AND

**MARIAM WAIRIMU WAMBUGU (SUED AS THE LEGAL ADMINISTRATOR
OF JACOB JUMA -DECEASED) 1ST DEFENDANT**

MARY WANJIRU CHEGE 2ND DEFENDANT

COMMISSIONER OF LANDS 3RD DEFENDANT

WILLIAM TS SANO 4TH DEFENDANT

SUAKEI OLE PARKIRE 5TH DEFENDANT

KENYA UNITED SPORTS LIMITED 6TH DEFENDANT

LETOO EP NCHEPAI 7TH DEFENDANT

RULING

1. Vide an application dated 4th April, 2025 and brought under order 42 and 51 of the Civil Procedure Rules and sections 1A, 1B and 63(e) of the *Civil Procedure Act*, the 7th Defendant hereafter referred to as the Applicant wants this Court to grant it an order staying the proceedings pending hearing and determination of his appeal before the Court of Appeal registered as Civil Appeal case number E301 of 2023.
2. The application is supported by the grounds listed on the face of the application and restated in the affidavit of Westone Kipkosgey Lang'at. inter alia, that their appeal lodged has high chances of succeeding. The party and party bill of costs already had a mention date for the purpose of obtaining a



ruling date before the taxing master. That if the order staying the proceedings is not granted, the appeal will be rendered nugatory.

3. The Plaintiff opposed the application through the replying affidavit of Wambugu Gitonga sworn on 8th June, 2025. Learned counsel confirmed that the Plaintiff had filed a party and party bill of costs dated 1st August, 2023 which is pending taxation. He avers that on 12th April 2024, the Court of Appeal declined to grant a stay of execution of the judgment as per certified copy of the ruling annexed as WG-2.
4. The counsel averred on behalf of the Plaintiff that the proceedings in ELC No E082 of 2023 (batula Hassan Abdi Vs Bamoja Construction Ltd & Others) seeking to enforce the impugned judgment is misleading as those proceedings are separate and distinct. He added that the mere dissatisfaction with a court judgment does not constitute a legal basis to stay proceedings.
5. Further, he contends that taxation is an independent process provided for under part III section 50 of the Advocates Remuneration Amendment Order, 2014. That granting an order staying the taxation would unfairly prejudice the Plaintiff's rights as a successful party.
6. The advocates for the parties made their oral submissions on 23rd July, 2025. Mr Ondabu learned counsel for the Applicant submits that the judgement in this case is being enforced through the various cases filed inter alia ELC E023 of 2023 whose proceedings he had obtained orders staying its prosecution. He argued that the issue for security of costs raised via the replying affidavit does not arise since the costs have not been taxed.
7. Ms Shaw for the Plaintiff submitted that the Applicant has not met the threshold of order 42 rule 6 (2) of the Civil Procedure Rules. That they cannot execute unless the costs are taxed. Second, that there are other parties sued who are not parties to the appeal. Third, she argues that the matter is old and should be finalised by allowing the taxation to take place.
8. She cited the case of KWS versus Mutyambai (2019)eKLR which held that stay of proceedings is a grave judicial action. However, Mr Ondabu in a rejoinder said the case cited is distinguishable since there was no dispute that they have an appeal which is pending.

Determination:

9. I have considered the grounds made in support of the application and the applicable law. On the face of the record, the matter was already determined and the losing party has proceeded to appeal against the said judgment to the Court of Appeal. The Plaintiff was awarded the suit land and the costs of the suit.
10. Consequently, they filed party and party bill of costs which are the proceedings the 7th Defendant now wants stayed. This court already determined that the Plaintiff is already entitled to costs of the suit and it is part of the decision the Applicant has challenged. However, it argues that if the said costs are assessed, the appeal would be rendered nugatory.
11. It is my considered opinion and I so hold that it serves the justice of this case to allow the taxation of the bill of costs to be concluded so the file can rest as it awaits the outcome of the appeal. At the opportune time, the 7th Defendant/Applicant can apply for a stay of execution of costs once they are re-taxed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025.

A. OMOLLO

JUDGE

