



**Muchene & another v Mwaura (Environment and Land Case
368 of 2017) [2025] KEELC 7288 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7288 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 368 OF 2017**

**CG MBOGO, J
OCTOBER 27, 2025**

BETWEEN

GODFREY JOHN MUCHENE 1ST PLAINTIFF

RAOUL EMMANUEL MUCHENE 2ND PLAINTIFF

AND

RACHEAL NDUTA MWAURA DEFENDANT

RULING

1. Before the court is the notice of motion dated 23rd June, 2025 filed by the defendant/applicant, and it is expressed to be brought under Section 3 & 3A of the [Civil Procedure Act](#) and Order 46 Rule 6 of the Civil Procedure Rules seeking the following orders:-
 1. Spent.
 2. That pending the hearing and determination of the reference to be filed in accordance with Paragraph 11 of the Advocates Remuneration Order stay of execution of the certificate of costs dated 18th June, 2025 do issue.
 3. That pending the hearing and determination of the reference to be filed in accordance with paragraph 11 of the Advocates Remuneration Order stay of execution of the certificate of taxation dated 18/06/2025 do issue.
 4. That the costs of the application be provided for.
2. The application is premised on the grounds on its face. It is also supported by the affidavit of the defendant/applicant sworn on even date. The defendant/applicant deposed that on 12th June 2025, the taxing officer Hon. Vincent Kiplagat delivered a ruling which taxed the party and party bill of costs dated 14th October, 2024 at KShs. 3,869,906/- which is exorbitant. She deposed that she objects to



- most of the items as taxed, and that the plaintiffs/respondents have already obtained the certificate of costs dated 18th June, 2025.
3. The defendant/applicant deposed that unless the orders are granted, execution will issue against her rendering the application an academic exercise, and more so, that she will suffer loss.
 4. The application was opposed vide the replying affidavit of the 2nd plaintiff/respondent sworn on 26th June, 2025. The 2nd plaintiff/respondent deposed that the defendant/applicant is yet to file a reference, and that the court cannot issue a blanket order staying execution of the certificate of costs. He deposed that the defendant/applicant has failed to demonstrate the substantial loss that she may suffer in the event stay is not granted. Further, that a mere yearning of objecting to the taxing officer's ruling doesn't qualify as a ground for stay of execution. The 2nd plaintiff/respondent contended that the conditions set out under Order 42 Rule 6 of the Civil Procedure Rules have not been met, and that it is in the interest of justice that the application is dismissed with costs.
 5. The defendant/applicant filed a further affidavit in response thereto sworn on 21st July, 2025. The defendant/applicant deposed that stay is discretionary and that the court is duty bound to make orders for security as it deems fit. Further, that the plaintiffs/respondents have no means to refund the amount as they have no resources.
 6. The application was canvassed by way of written submissions. The defendant/applicant filed her written submissions dated 21st July, 2025, where she raised one issue for determination which is whether the application is merited. She submitted that the plaintiffs/respondents have no means to refund the taxed amount if the same is deposited as they lack means. She submitted that this will expose her to undue hardship incase she succeeds with the reference. She relied on the cases of Century Oil Trading Company Ltd v Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007, Gianfranco Manenthi & Another v Africa Merchant Assurance co. Ltd [2019] eKLR, and Nduhiu Gitahi v Warugongo [1988] KLR 621; 1 KAR 100; [1988-92] 2 KAR 100.
 7. The plaintiffs/respondents did not file their written submissions. Be that as it may, I have considered the application, the replies thereof, and the written submissions filed by the defendant/applicant. I will adopt the issue for determination as framed by the Defendant/Applicant which is whether the application has merit.
 8. Being dissatisfied with the decision of the taxing officer delivered on 12th June, 2025, the defendant/applicant is desirous to object to the same. She approached the court for orders of stay of execution owing to the certificate of costs dated 18th June, 2025 which she is apprehensive that if executed, it will render the reference an academic exercise.
 9. Notably, is that the defendant/applicant is yet to file reference challenging the said ruling. What is evident on record is the notice of objection dated 19th June, 2025.
 10. Paragraph 11(1) of the Advocates Remuneration Order stipulates as follows:-

“Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.”



11. In the case of *Labh Singh Harman Singh Ltd v Attorney General & 2 others* [2016] KEHC 6690 (KLR), the court held as follows:-

“It follows, in my view, that the provisions of the *Civil Procedure Act* with regard to stay of execution will apply to proceedings, which are of a civil nature, for the reference of an objection to the court from the taxation of a Bill of Cost by a taxing officer of the court under the Advocates’ Remuneration Order.

11. This position accords with the interests of justice that a party against whom substantial sums of money have been adjudged in the nature of taxed costs should not be required to pay such monies before his challenge on the liability and quantum of the taxed costs is determined through a reference under the Advocates’ Remuneration Order, which is the procedure provided for such determination. Otherwise such references would be rendered nugatory, if eventually successful, and become a complete waste of judicial time.
 12. By analogy of the stay of execution pending appeal under Order 42 rule 6 of the civil procedure rules, a court will in granting stay of execution pending hearing and determination of a reference to a judge from taxation of costs be guided by presence of substantial loss and the provision of suitable security for due performance of the terms of the decree or order that may eventually be binding upon the applicant.
 13. The court, while asserting jurisdiction to order stay of execution of the certificate of taxation of costs pending the hearing and determination of the reference to a judge, will determine whether the applicant stands to suffer substantial loss if stay is not granted and whether the applicant has provided security.
 14. Counsel for the respondent has urged that the applicant has not given any notice in writing to the taxing master on the items in the Bill of Costs objected to. The Reference dated 17th September 2015 and filed on 18th September 2015 as Misc. Application No. 192 of 2015 and annexed to the supporting affidavit, may qualify as the notice in writing as ground No. 4 of the reference challenges the entire taxation of the items on the grounds that “the Taxing Master’s decision was based on an error of principle and the fees award was manifestly high to justify an error of principle.”
 15. However, the applicable rule 11 of the Advocates’ Remuneration Order contemplates a notice in writing requesting for reasons of the taxing officer’s decision on taxation of specified items of the Bill of Costs, and upon receipt thereof an application commonly referred as a reference to a judge, by way of chambers summons setting out the grounds of objection to the taxation. See paragraph 11 (2) of the Advocates’ Remuneration Order.
 16. In the interests of justice, to enable the filing of an appropriate application for consideration by the court, the court will grant the applicant a limited period of time to comply with the provisions of Paragraph 11 of the Advocates’ Remuneration Order, and in the meantime order a stay of execution of the certificate of taxation of costs dated 10th June 2015, upon terms.”
12. From the above, I am of the view that while the defendant/applicant is intent on objecting to the decision of the taxing officer going by the notice of objection, it would have saved precious judicial time if the instant application would be accompanied by the said reference. I understand that the defendant/applicant is apprehensive of imminent execution owing to the certificate of taxation issued. In the interest of justice and bearing in mind the provisions of Section 94 of the *Civil Procedure Act*, it is my finding that it is necessary to stay execution of the certificate of costs dated 18th June, 2025.



13. This court finds merit in the notice of motion dated 23rd June 2025, and I will exercise discretion in favour of the defendant/ applicant as follows:-
1. The defendant/applicant is directed to file and serve her reference within seven days from the date of this ruling.
 2. Pending the hearing and determination of the reference, an order stay of execution of the certificate of costs dated 18th June, 2025 is hereby issued.
 3. Costs in the cause.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 27TH DAY OF OCTOBER, 2025.

HON. MBOGO C.G.

JUDGE

27/10/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Ochieng for the Defendant /Applicant

