

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KISII
ELCLA E025 OF 2025

TABAKA SOAPSTONE COMPANY T/A TABAKA SOAPSTONE FACTORY
..... APPELLANT

VERSUS

KISII SOAPSTONE PRODUCTS COMPANY LIMITED RESPONDENT

KISII SOAPSTONE CARVERS CO-OPERATIVE SOCIETY
..... INTERESTED PARTY

RULING

1. The application before me is that dated 23 June 2025 filed by the appellant. The substantive prayer sought is an order to stay taxation of a bill of costs lodged by the respondent in the suit Etago PMELC No. E012 of 2025 pending hearing and determination of this appeal. The application is opposed.
2. I do not have the benefit of the pleadings in the case Etago PMELC No. E012 of 2025 and all that I need to work with is the ruling dated 13 June 2025 which has provoked this appeal. In that ruling, the case of the appellant/applicant was dismissed ‘with costs to the defendant’ for reason that there was no company resolution filed together with the plaint. Aggrieved by that ruling the applicant filed this appeal and followed it up with the present application. In the supporting affidavit, sworn by Elvis Ochieng Adingo, who is the advocate on record for the applicant, it is said that the respondents have filed a bill of costs dated 16 June 2025 for taxation. He deposes that unless stay is given the respondent may proceed to tax the bill and execute it on behalf of the interested party who was not awarded costs.
3. The application is opposed by the affidavit of Zebedee Mark Obara who has averred that he has authority to swear the affidavit on behalf of the respondent and interested party. He does not see what prejudice the taxation of costs will cause the applicant as it does not hinder the applicant’s right of appeal.
4. The application was canvassed through written submissions and I have taken note of the submissions filed.
5. Pursuant to Order 42 Rule 6 (2) this court may grant stay pending appeal. Order 42 Rule 6 (2) is drawn as follows :

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

6. The above law informs the court not to make an order of stay of execution unless the court is satisfied of three things, being :
 - (i) That the applicant stands to suffer substantial loss.
 - (ii) That the application has been made without unreasonable delay.
 - (iii) That there is provided such security for the due performance of the decree in the event that the applicant loses the appeal.
7. I have no problem with delay, because the application was filed on 23 June 2025 and the ruling was delivered on 13 June 2025. My concern however is on the issue of substantial loss.
8. At the outset, it will be observed that there is actually no affidavit from the applicant at all. What I have is an affidavit by counsel on record for the applicant. You would expect that the applicant himself will file an affidavit explaining any loss that he/she stands to suffer if taxation of the bill of costs proceeds but there is none. Even assuming that the affidavit of Mr. Adingo is proper, I have not seen anywhere where he deposes the nature of loss that the applicant stands to suffer if the taxation of the bill of costs proceeds. Certainly, the appeal cannot be rendered nugatory merely because costs have been taxed.
9. I need not say more. There is no substance in this application and it is hereby dismissed with costs to the respondent and interested party.

DATED AND DELIVERED THIS 29 DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of :

Mr. Nyambati for the respondent

No appearance on part of Mr. Adingo for the applicant

Court Assistant – Michael Oyuko