



Muma & Kanjama Advocates v Magwanga (Commercial Miscellaneous Application E632 of 2022) [2025] KEHC 15564 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E632 OF 2022**

PM MULWA, J

OCTOBER 30, 2025

BETWEEN

MUMA & KANJAMA ADVOCATES APPLICANT

AND

HON JOSEPH OYUGI MAGWANGA RESPONDENT

RULING

1. This ruling is in respect of two applications, one dated 31st August 2024 and the other 12th November 2024. Both applications are brought under Order 22 Rule 22, Order 42 Rules 6 and Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A and seek similar orders.
2. The applicant seeks the following orders:
 - i. spent
 - ii. That leave be granted to the firm of H. Obach & Partners Advocates to come on record for the applicant /Respondent herein, Hon. Joseph Oyugi.
 - iii. That an order for stay of execution of the decree dated 20th September 2024 and all consequential orders pending hearing of the application dated 6th December 2023
 - iv. An order to review and /or set aside the ex parte orders issued on 22nd August 2024 and the subsequent decree dated 20th September 2024.
 - v. An order setting aside, nullifying and/ or revoking the warrants of attachment and sale dated 8th October 2024 issued to Betabase Auctioneers.
 - vi. The applicant is granted leave to defend the application dated 6th December 2023.



- vii. The costs of the application should be provided for.
3. The applications are premised on the grounds of the face of the record and supported by the annexed affidavits of Hon. Joseph Oyugi Magwanga. He avers that he was never served with the Bill of Costs and the application dated 6th December 2023, that the legal fees had been agreed at Kshs. 1 Million, and thus the Respondent is not supposed to tax, and that his properties are facing imminent danger of execution.
4. Opposing the application Timothy Khasogo, an advocate for the Respondent Muma & Kanjama, filed a replying affidavit sworn on 16th December 2024. He contends that the Respondent represented the applicant in various legal matters and specifically Supreme Court No. 17 of 2018, where judgment was delivered on 7th February 2019. The applicant failed to settle the legal fees, which prompted the Respondent to file the Bill of Costs. The applicant was duly served with the bill of costs through the email address Magwangaoyugi@yahoo.com where all formal communication was previously done.
5. And further that during the pendency of the same, the parties were in negotiations over the Bill of Costs. The negotiations failed as the applicant became unresponsive and thus taxation proceeded and the bill was taxed at Kshs. 7,158,744/= on 28th July 2023, and a certificate of costs issued on 26th October 2023, thus paving the way for the Respondent to execute. The issues raised seek to challenge the decision of the Deputy Registrar.
6. Parties thereafter filed submissions. The Respondent contends that the applicant has not met the threshold for granting a stay of execution,

Analysis and determination

7. I have considered the two applications dated 31st August 2024 and 12th November 2024, the affidavits filed in support and opposition thereof, and the rival written submissions by the parties. The issues that arise for determination are:
 - i. Whether the firm of H. Obach & Partners Advocates should be granted leave to come on record for the Applicant,
 - ii. Whether the Applicant has met the threshold for the grant of a stay of execution
 - iii. Whether sufficient cause has been shown to warrant review and/or setting aside of the ex parte orders issued on 22nd August 2024 and the subsequent decree dated 20th September 2024.
8. Order 9 Rule 9 of the Civil Procedure Rules, provides for a change of Advocates to be effected by order of the Court or consent of parties, to wit:

“When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court —

 - a. upon an application with notice to all the parties; or
 - b. upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person, as the case may be.”



9. The reasoning behind the provision was well articulated in the case of S. K. Tarwadi vs Veronica Muehlmann [2019] eKLR, where the judge observed as follows:

“...In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him...”

10. The application seeks leave for the firm of H. Obach & Partners Advocates to come on record for the Applicant. In the Present suit, since judgment has been delivered, the change of advocate can only be effected upon order of the Court or consent of the outgoing and incoming advocates. The Applicant has invoked the proper procedure by seeking leave. I accordingly find merit in that limb and allow the firm of H. Obach & Partners Advocates to come on record for the Applicant.

11. On stay of execution, Order 42 Rule 6(1) of the Civil Procedure Rules states that:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside. 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.”

12. From the foregoing provisions, it is clear that granting or rejecting an application for stay of execution is purely a discretionary exercise of the court. Such discretion must, however, be exercised judiciously and in accordance with the established legal principles. It follows that every application for stay must be determined on its own peculiar facts and circumstances.

13. The Applicant contends that he stands to suffer substantial loss as his property faces imminent attachment and sale pursuant to the warrants issued on 8th October 2024. He further asserts that he was not served with the Bill of Costs or the application dated 6th December 2023, and that the parties had agreed on legal fees of Kshs. 1,000,000/=, hence the taxation proceedings were irregular.

14. The Respondent, on the other hand, maintains that the Applicant was duly served with the Bill of Costs through his known email address magwangaoyugi@yahoo.com which had been used in prior correspondence. It is further deposed that during the pendency of the taxation proceedings, the parties engaged in negotiations which ultimately broke down when the Applicant became unresponsive. The record reveals that the Bill was taxed at Kshs. 7,158,744/= on 28th July 2023, a Certificate of Costs was issued on 26th October 2023, and execution proceedings were thereafter commenced.

15. It is a trite law that taxation of costs falls within the jurisdiction of the Deputy Registrar. A party aggrieved by the decision of the taxing officer must proceed by way of a reference under Rule 11 of



the Advocates (Remuneration) Order within fourteen (14) days of the decision. Once a Certificate of Costs has been issued and has not been set aside or varied on reference, it becomes final as to the amount of the costs. The High Court cannot purport to reopen taxation proceedings in the absence of a properly filed reference. (See Court of Appeal in *Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR).

16. In the present case, the Applicant has not filed any reference to challenge the decision of the taxing officer, nor has he demonstrated that any steps were taken within the statutory period to set aside or vary the Certificate of Costs. His attempt to impeach the Certificate through an application for stay is, in my view, procedurally and substantively misplaced.
17. On the issue of delay, the decree was issued on 20th September 2024 and the warrants on 8th October 2024. The present application was filed on 31st August 2024 and supplemented on 12th November 2024. Though not inordinate, the Applicant has not demonstrated good faith by proposing any security for the due performance of the decree.
18. In view of the foregoing, I am not persuaded that the Applicant has satisfied the cumulative requirements for the grant of stay of execution. The application for stay therefore fails.
19. On the issue of review, by the application dated 6th December 2023, the Respondent sought judgment in accordance with the Certificate of Costs dated 26th October 2023 in the sum of Kshs. 7,158,744/= . The Court allowed the same, and a decree was issued on 22nd August 2024. It is this decree that the Applicant now seeks to review and/or set aside.
20. The governing law is Order 45 Rule 1 of the Civil Procedure Rules, which provides that a person aggrieved by a decree or order may apply for review on the grounds of discovery of new and important matter or evidence, mistake or error apparent on the face of the record, or any other sufficient reason.
21. A review will only be granted when there is a clear error apparent on the face of the record or discovery of new matter which could not, with due diligence, have been produced before the court. It is not an avenue for re-arguing the case.
22. The Applicant alleges a lack of service of the Bill of Costs and the taxation proceedings. However, the Respondent has annexed proof of service via email, which the Applicant has not credibly refuted. The mere denial of service, in the face of documented evidence to the contrary, does not amount to discovery of new evidence or constitute sufficient cause for review.
23. Consequently, I find that the Applicant has not met the threshold for review or setting aside of the impugned orders and decree. The twin applications dated 31st August 2024 and 12th November 2024 are bereft of merit and are hereby dismissed.
24. In the result, the Court makes the following orders:
 - i. Leave is granted to the firm of H. Obach & Partners Advocates to come on record for the Applicant.
 - ii. The prayers for stay of execution, review, and setting aside of the orders issued on 22nd August 2024 and the decree of 20th September 2024 are dismissed for want of merit.
 - iii. The warrants of attachment and sale dated 8th October 2024 shall remain valid and enforceable.
 - iv. Costs of both applications are awarded to the Respondent.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI



THIS 30TH DAY OF OCTOBER 2025.

P.M. MULWA

JUDGE.

In the presence of:

Mr. Khasogo h/b for Mr. Kanjama, SC for Applicant

Ms. Ochieng h/b for Mr. Obach for Respondent/Applicant

Court Assistant: Carlos

